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No. 840. 4-441

U.S. CIRCUIT COURT,

FOR THE

7th JUDICIAL CIRCUIT,

NORTHERN DISTRICT OF ILLINOIS.

In the matter of
HARRY FOX AND WM. B. HOWARD,
BANKRUPTS. } *In Bankruptcy.*

PETITION FOR REVIEW.

CHARLES S. CRANE, and
JEFFERSON HODGKINS,
Petitioners.

VS.

ALBERT CONRO,
WILLARD S. CARKIN,
HARRY FOX, and
BRADFORD HANCOCK,
Respondents.

COOPER, GARNETT & PACKARD, and
CRANE & TATHAM,
For Petitioners.

TULEY, STILES & LEWIS, and
AYER & KALES,
For Conro & Carkin, and Harry Fox,

TENNEYS, FLOWER & ABERCROMBIE,
For Bradford Hancock.

CHICAGO:
HAZLITT & REED, LAW PRINTERS, 172 AND 174 CLARK STREET.
1876.

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For Conro & Carkin, and Harry Fox,

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For Bradford Hancock.

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UNITED STATES OF AMERICA. } S. S.

NORTHERN DISTRICT OF ILLINOIS.

UNITED STATES CIRCUIT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS,

IN BANKRUPTCY.

In the Matter of Harry Fox and William B. Howard, Bankrupts.	*Petition for Review under the 4986th Section of the Revised Statutes of the United States.*

To the Honorable Thomas Drummond, Circuit Judge of the United States for the Seventh Judicial Circuit and Northern District of Illinois:

Your petitioners, Charles S. Crane and Jefferson Hodgkins, respectfully show unto your Honor, that on the 18th day of August A. D. 1875, they filed their joint petition in the United States District Court, for the Northern District of Illinois, in bankruptcy in the above entitled matter, which said Petition, except the exhibits attached thereto, was in the words and figures following, to wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS.

IN THE DISTRICT COURT FOR SAID DISTRICT,
IN BANKRUPTCY.

IN THE MATTER OF HARRY FOX
AND WILLIAM B. HOWARD,
Bankrupts.

Your petitioners, Jefferson Hodgkins and Charles S. Crane, respectfully show unto your Honor, that they are now, and for some time have been residents of the city of Chicago, in the Northern District of Illinois, and that heretofore, to wit: on or about the 5th day of June, 1875, the said bankrupts, being in copartnership under the firm name and style of Fox & Howard, were adjudged bankrupt, pursuant to the prayer of a petition in involuntary bankruptcy, filed against said firm on the 28th day of May, 1875; that on or about the 16th day of June, 1875, one Bradford Hancock of said city of Chicago, was appointed provisional assignee by said Court, that on receiving such appointment he took possession of certain of the property belonging to said bankrupts, which is hereinafter more particularly described and enumerated, and that on or about the 19th day of June, 1875, an order was entered of record, by said District Court, directing said provisional assignee to receive bids for the sale of certain personal property, then in his possession belonging to the estate of said bankrupts, a copy of which order is hereto annexed, marked 'Exhibit A.' That in pursuance of such order said provisional assignee proceeded to advertise said property for sale, and afterwards received divers bids for the same, among which was one made by your petitioners for the sum of forty thousand dollars, in the name of your petitioner, Jefferson Hodgkins, which said bid was made by your petitioner Hodgkins for and on behalf of your petitioner, Charles S. Crane, and by directions and instructions of the said Crane to said Hodgkins in that behalf. That afterwards, to-wit: on the 9th day of July, 1875, said provisional assignee applied to the District

Court for said Northern District of Illinois, for an order confirming the sale of said property to your petitioner, Jefferson Hodgkins, his said bid, offered on behalf of your petitioner, Charles S. Crane, being the highest and best bid offered for said property.

And your petitioners further show unto your Honor, that said provisional assignee received a large number of bids for the sale and purchase of said property, in writing, and that the amounts offered in and by said bids varied, as your petitioners are informed, and believe, and so charge the fact to be, from the sum of thirteen thousand dollars, up to, and including the sum of forty thousand dollars, offered by your petitioner, Charles S. Crane, as aforesaid, which was the highest bid for the property. That among the number of said bids was one offered by Albert Conro, of the city of Milwaukee, for about the sum of thirteen thousand and three hundred dollars, for about three-fourths of the same in value, that after the receipt of such bids, and on the 9th day of July, 1875, the said provisional assignee applied to said District Court for an order confirming the sale of said property, a copy of which said application is hereto attached, marked 'Exhibit B,' to your petitioner, Charles S. Crane, in the name of your petitioner, Jefferson Hodgkins, it having been ascertained that his said bid for forty thousand dollars was the highest and best bid offered for said property, and that afterwards, and on the same day, the said District Court entered an order and by the terms thereof the said provisional assignee was then and there directed to execute the necessary transfer papers, to vest all the right, title, and interest of said bankrupts in and to the property aforesaid in your petitioner, upon the due payment by your petitioner of the sum of forty thousand dollars, as set forth and specified in said bid of your petitioner, Charles S. Crane. And your petitioners annex hereto a certified copy of such order entered on said 9th day of July, marked 'Exhibit C.'

Your petitioners further show unto your honor that on the same day, and soon after the entry of such order, the said

provisional assignee called at the office of Miller & Kimball, at the corner of Lake and Clark streets, in said city, as your petitioners are informed and believe, and so charge the fact to be, and stated to Dorr A. Kimball, and also to James E. Miller, that the bid of forty thousand dollars offered by your petitioner, Jefferson Hodgkins, had been confirmed by said District Court; that, thereupon, as your petitioners are informed and believe, and so charge, the said Miller and said Kimball stated to said provisional assignee that your petitioner, Charles S. Crane, was the purchaser, and directed him to the office of your petitioner, Charles S. Crane; that, thereupon, said provisional assignee left the office of Miller & Kimball, and soon thereafter, on the same day, held a conversation with your petitioner, Jefferson Hodgkins, and then and there informed your petitioner, Hodgkins, that the bid of forty thousand dollars had been confirmed by said District Court, and that he then and there had a certified copy of such order; whereupon your petitioner, Jefferson Hodgkins, answered in substance, "All right, we will go and see Mr. Crane," meaning your petitioner, Charles S. Crane, "who is to provide and furnish the money for said bid;" that, thereupon, said provisional assignee got into the buggy of your petitioner, Jefferson Hodgkins, and was taken to the office of your petitioner, Charles S. Crane, situated on the corner of Canal and West Washington streets, in said city of Chicago; that upon arriving at said office, your petitioner, Charles S. Crane, was absent, whereupon said provisional assignee entered into conversation with your petitioner, Jefferson Hodgkins, and one William H. Woodbury, the book-keeper and general business manager for your petitioner, Charles S. Crane, and who was then and there present. Said assignee, taking from his pocket the said certified copy of the order of sale entered by said District Court on said 9th day of July, and, reading it aloud in the presence of your petitioner, Jefferson Hodgkins, and said William H. Woodbury, then and there inquired of said Woodbury if he knew anything about the purchase of said property and of the payment of said sum of forty thousand dollars, and whether or not your petitioner, Charles S. Crane, was interested in said

purchase and intended to furnish and pay to said assignee the sum of forty thousand dollars mentioned and set forth in the bid offered by your petitioner, J. Hodgkins; that, thereupon, said William H. Woodbury informed said provisional assignee that said bid had been made in good faith and was the bid of your petitioner, Charles S. Crane, and that he, meaning your petitioner, Charles S. Crane, intended to carry out the terms of said sale and pay said sum of forty thousand dollars in good faith; that, thereupon, said provisional assignee and your petitioner, Jefferson Hodgkins, left the office of said Charles S. Crane in company, your petitioner parting company with said assignee shortly thereafter, after giving him to understand that your petitioner, Charles S. Crane, was really the purchaser of said property and would pay the sum of forty thousand dollars therefor whenever called upon in that behalf.

Your petitioners further show unto your honor that afterwards, and on the afternoon of Saturday, July 10, 1875, at about the hour of 5 P. M. of said day, the said provisional assignee called at the office of your petitioner, Charles S. Crane, and, after introducing himself as the provisional assignee of the estate of Fox & Howard, bankrupts, entered into a conversation with your petitioner, Charles S. Crane, in respect to said sale and the payment of said sum of forty thousand dollars mentioned in the bid of your petitioners; that said assignee then and there inquired of your petitioner, Charles S. Crane, if he was interested in said bid, and whether or not he intended to faithfully carry out the terms of the same and to comply with the conditions of said sale, and pay said sum of forty thousand dollars in good faith, and was then and there expressly assured by your petitioner, Charles S. Crane, that such was the truth; that your petitioner, Charles S. Crane, had instructed your petitioner, Hodgkins, to make said bid, and that your petitioner, Charles S. Crane, was ready and willing at any time to pay said sum of forty thousand dollars, and was anxious to have said property delivered as soon as convenient; whereupon said provisional assignee assured your petitioner, Charles S. Crane, that he had been informed

that your petitioner, Crane, was interested in said bid, and was really the purchaser of said property, and he had called merely for the purpose of ascertaining whether or not such representations were true, and whether said sale was *bona fide*, adding in substance, "I know you by reputation, Mr. Crane; this thing is all right now; we will fix this matter up on Monday morning," meaning thereby the Monday next following, to-wit: July 12, 1875; that, thereupon, your petitioner, Charles S. Crane, inquired of said provisional assignee respecting the amount of money he would require or expect on said Monday morning, and was informed that he, said provisional assignee, was not particular as to the amount, but would expect a deposit as evidence of the good faith of the transaction, and your petitioner, Charles S. Crane, then assured and stated to said provisional assignee that he would call on Monday morning and make a deposit on account of such purchase; that during the course of such conversation the term of said purchase and time and place where his deposit on account of such purchase should be paid were fully discussed and perfectly understood, in substance, as hereinafter set forth, to-wit: Your petitioner, Charles S. Crane, was to meet said provisional assignee on the Monday then next following, in the morning of said day, at the office of said assignee, and then and there pay to said assignee a sum of money not specifically named in the conversation had with your petitioner with said provisional assignee, the said provisional assignee then and there expressed himself as being fully satisfied with the sale he had made to your petitioner, Charles S. Crane, and with all and singular the terms and conditions expressed and agreed upon in said conversation.

Your petitioners further show unto your Honor, that on the morning of July 12, 1875, at and before the hour of 10 o'clock A. M., of said day, your petitioners, in company, proceeded to carry out the terms of said purchase, to make the payment agreed upon on the preceding Saturday, and to demand and receive the transfer papers necessary to vest in your petitioner, Jefferson Hodgkins, all the right, title, and

interest of said bankrupts, to the property mentioned and described in the bid of your petitioner; that as soon as the banks were open for the transaction of business, your petitioner, Charles S. Crane, procured the sum of twenty thousand dollars, for the purpose of paying the same to said provisional assignee, as and for a deposit on account of said purchase, and in pursuance of the terms and conditions of the agreement made with said provisional assignee on the preceding Saturday afternoon; and that, thereupon, your petitioners went to the office of said provisional assignee, and then and there stated that they had come for the purpose of closing up and completing the terms of such purchase, and were then and there ready to make such payment, and to receive from said provisional assignee the transfer papers necessary to vest the title of said property in your petitioners, as set forth in said confirmatory order of the District Court on July 9, 1875; that then and there your petitioner, Charles S. Crane, offered said provisional assignee, two certified bank checks, for the sum of ten thousand dollars each, which the said provisional assignee then and there received in his hands, and remarked in substance to your petitioners, "These are all right, gentlemen, but you are too late; I have sold the property to other parties, and the money has been paid." Whereupon your petitioner, Charles S. Crane, called the attention of said provisional assignee to the agreement of the preceding Saturday afternoon, and then and there inquired if he had not arranged with said provisional assignee to consummate the purchase of said property at the very hour then present, or on that morning, to which inquiry the said provisional assignee answered, "The morning is gone." And your petitioner, Charles S. Crane, responded in substance, "It is morning 'till noon, is it not?" To which last mentioned inquiry said provisional assignee made no reply. Whereupon, after some further conversation, your petitioner withdrew. And your petitioners state that the time they held the interview with said provisional assignee, last above mentioned, was just ten minutes past eleven o'clock, A. M., on said Monday morning.

And your petitioners further show unto your Honor, and aver on information and belief, and charge the same as true, that early on the morning of said Monday, July 12, 1875, the said provisional assignee, with full knowledge that your petitioners would consummate said purchase and sale, at the time specified and agreed upon in the conversation of July 10, and with the further knowledge that petitioners would, in good faith, pay the sum of money and claim the title papers for said property, the said provisional assignee, notwithstanding such agreement and knowledge, made two applications to the Honorable, the District Judge of said District, to have the order confirming the bid, and authorizing the sale of said property to your petitioners of said 9th day of July, 1875, set aside, and vacated, and held for nothing. That the first of said applications was made, as your petitioners are informed and believe, and so charge the fact to be, at, or about the hour of nine o'clock, A. M., of said day, and such application was made to the Honorable, the Judge of said District Court, in chambers, and long before the banks of the city were open for the transaction of business, and well knowing that your petitioner could not by any means procure such sum of money at or before the hour of ten o'clock, A. M., of said day; and that the second of such applications was made at or about the hour of ten o'clock, of said day. And your petitioners allege that both such applications were made in fraud of your petitioners rights in the premises.

And your petitioners further show unto your Honor, that upon the *ex parte* application of said provisional assignee, made to the Honorable, the Judge of the District Court, the second time, and at or about the hour of ten o'clock, A. M., of said day, and without any notice to, or any knowledge on the part of your petitioners, or either of them, the said District Court entered an order of record, vacating and setting aside the order of sale made on the said 9th day of July, to your petitioners, and upon the further *ex parte* application of said assignee, and without any notice to your petitioners, or

either of them, and with the full knowledge of your petitioners' rights in the premises, the said provisional assignee procured an order to be entered of record in said District Court, confirming the sale of said property to Albert Conro and Willard S. Carkin, co-partners, doing business under the firm name of Conro & Carkin, the said Albert Conro being a resident of the city of Milwaukee, and State of Wisconsin, and being the same person who had previously bid $13,300 for the said property, to the amount of about three-fourths of the whole of the same in value; and said Willard S. Carkin residing, temporarily, in the Northern District of Illinois, and who was, on the 12th day of July, and now is, and for a long time past has been, boarding and residing in the family of the said Harry Fox, a copy of which said order is hereby annexed, marked "Exhibit D," for the pretended sum of forty thousand five hundred dollars; and soon thereafter, as your petitioners are informed and believe, and so charge the fact to be, delivered the property aforesaid to said firm of Conro & Carkin, for the purpose and under the circumstances hereinafter set forth.

And your petitioners further show unto your honor, that they are informed and believe, and so charge the fact to be, that during the interval of time which elapsed between the conversation held with said Charles S. Crane, on the afternoon of Saturday, July 10, 1875, and the morning of the Monday following, the said provisional assignee engaged himself with divers parties to defeat the sale of said property to your petitioners, and that during such interval of time, a combination was formed between the members of the bankrupt firm of Fox & Howard, and the said firm of Conro & Carkin, the pretended purchasers, together with said provisional assignee, for the purpose of buying in said property for the benefit and advantage of said bankrupts, and that such assignee became, and was, and is, a willing party to such combination. That said provisional assignee acted on behalf, and in the interests of said bankrupts, and on behalf, and in the interest of, or pretended interest of said firm of Conro & Carkin, and was

well aware when your petitioners called for the purpose of consummating said sale and purchase, that said property would ultimately pass to the possession of said bankrupts. And your petitioners are informed and believe, and charge the fact to be, that on said morning of July 12, the said provisional assignee received as a deposit on account of the pretended sale to said Conro & Carkin, a certified bank check for the sum of about fifteen thousand five hundred dollars, and that said certified bank check was procured before the hour when the banks in the city of Chicago were open for the regular transaction of business, by one of said bankrupts, the said Harry Fox. And your petitioners charge that the balance of said forty thousand five hundred dollars, being about the sum of twenty-five thousand dollars, was paid to the said provisional assignee by a bank check drawn by the said Willard S. Carkin, and that at the time the said check was so drawn and delivered to said provisional assignee, the said Carkin did not have any money to his credit in the bank upon which said check was drawn, but that the amount called for by said check was procured upon the solicitation, and by means of credit given to the said Harry Fox, and in pursuance of the unlawful combination herein set forth.

And your petitioners further show unto your honor, and charge, on information, and belief that said pretended sale to Conro & Carkin was made in bad faith, and was intended to and does disguise and conceal the real interests of said bankrupts in and to said property, and was made for the purpose of keeping said property in the possession, care and control of said bankrupts. That ever since said pretended sale, the said bankrupts have had the exclusive use and control of the same, and have been and are now engaged in directing the use and operation of the tug boats, dredges, pile drivers, and all and every the machinery and tools connected therewith. That such possession is unlawful and contrary to the manifest rights of your petitioners in the premises, and that said bankrupt firm of Fox & Howard are now deriving large gain and profit from the use and possession of said property, and by such

unlawful use and possession are depriving your petitioners of large gains and profits, which otherwise, and but for the unlawful combination herein charged, and the bad faith practiced by said provisional assignee, would have accrued and become the property of your petitioners. And your petitioners further show, on information and belief, and so charge the fact to be, that on the same day, to wit, July 12, 1875, or the following day, July 13, 1875, one of the members of said bankrupt firm, with full knowledge in the premises as to the rights of your petitioners, and in pursuance of the fraudulent and unlawful combination aforesaid, visited the office of the Board of Public Works of said city of Chicago, and there and then informed said Board, or some member thereof, that they, meaning said bankrupt firm of Fox & Howard, were in the possession of and had the necessary machinery to proceed, carry out and complete contracts for city work. That said information was imparted to said Board of Public Works on the very day, or the day after said pretended sale of the property aforesaid to the firm of Conro & Carkin, and formed a part of the original intention to deceive and defraud your petitioners.

And your petitioners further charge, on information and belief, that on the same day the said Board of Public Works of the city of Chicago, in said district, executed to said bankrupts, Harry Fox and William B. Howard, a certain contract, to do and perform the necessary dredging and repairing for said city of Chicago during the ensuing year, and your petitioners charge that said bankrupts, Harry Fox and William B. Howard, then and there entered into bond and surety for the faithful performance of the work called for in said contract, and that Anson Fox, a near relative of one of said bankrupts, and Willard S. Carkin, a member of said firm of Conro & Carkin, joined in the execution of said bond as sureties thereon and thereupon, and your petitioners are informed and charge the fact to be, said bankrupt firm began the prosecution of said work aforesaid, and are now engaged in prosecuting the same, and in so doing, are using the property sold

to your petitioners on the said 9th day of July, 1875. That said firm of Conro & Carkin are operating said property conjointly with said bankrupts, and are by means thereof depriving your petitioners of their just rights in the premises.

And your petitioners further show unto your Honor, that the use of the said dredges, tug boats, pile drivers, and other property, so sold to your petitioners, can only be used during the late spring, and summer, and the early fall, of the year, with profit and advantage; that the same are now being used by the said bankrupts, and said Conro & Carkin, with great profit and advantage to them, and to the great injury of your petitioners in the premises; and that the said bankrupts, and the said Conro & Carkin, hope and expect that, by means of the delay to which they may put your petitioners, in gaining possession of said property, that they, said bankrupts, and Conro & Carkin, will be able to retain the possession and use of said property during the present season, and, by means thereof, will obtain for themselves great profit and advantage, from the use of the same, and thereby deprive your petitioners of the profit and advantage which your petitioners would obtain from the use of said property, if the same was now in their possession and control, as in equity and good conscience it ought long since to have been.

And your petitioners further state, that, after the entry of the order by the honorable, the Circuit Judge of the United States, in and for said district, on the 13th day of August, instant, setting aside the order hitherto entered by said District Court, on the 12th day of July, 1875, and giving to your petitioners the opportunity to be heard upon the application of said assignee to set aside, or vacate, the conformatory order of the 9th day of July, your petitioners have waited for the said assignee, or for said Conro & Carkin, to institute proceedings to set aside said conformatory order of the 9th of July, in the hope that a speedy determination of the matters at issue might be had, in order to give your petitioners the benefit of their rights in the premises. And that, on the 17th

day of August, instant, your petitioners, and their solicitors, called upon said provisional assignee, and tendered to him a certified check upon the First National Bank of Chicago, in said district, for the sum of forty thousand dollars, and demanded that the said assignee should take said check and deliver to your petitioners the said property so purchased by them, as aforesaid; but the said assignee, whilst admitting that the said property was beyond his control, and that he was not able to deliver the possession of the same to your petitioners, or either of them, in bad faith, as your petitioners charge, offered to receive the said check, and deposit the proceeds thereof with the Clerk of the said District Court. But your petitioners having no confidence in the pecuniary responsibility, or the good faith, of said assignee, now bring the said forty thousand dollars into this Court, and offer to pay the same over to the Clerk of this Court, in payment for the said property so purchased by them. And they now are, and ever have been since the said 9th day of July, 1875, ready, willing, and desirous, to pay for the said property the said sum of forty thousand dollars, so bid by them therefor.

And your petitioners humbly pray, that, in consideration of the premises, it may please your Honor,

To grant a rule upon the said Bradford Hancock, provisional assignee, as aforesaid, said Albert Conro, and Willard S. Carkin, and said Fox & Howard, bankrupts, to show cause, by a short day, to be therein mentioned, why the said property so purchased by your petitioners should not be delivered to your petitioners, and why the order of the 12th day of July, 1875, authorizing a sale and delivery of said property to said Conro & Carkin should not be vacated, set aside, and held for naught; and why the said Conro & Carkin should not pay over to your petitioners the profits realized by them from the use of said property since the said 12th day of July, or should not pay over to your petitioners the value of the use of said property.

And that an order may be entered by this honorable Court

setting aside, vacating, and holding for naught, the said order of the 12th day of July, last past, authorizing the sale and delivery of said property to said Conro & Carkin, directing and commanding the said Conro & Carkin, and the said Fox & Howard, bankrupts, and the said provisional assignee, to deliver forthwith to your petitioners all the said property, and to pay to your petitioners the amount of money which they, the said bankrupts, and said Conro & Carkin, or either of them, have realized from the use of said property since the said 12th day of July, up to the time of the delivery of the same to your petitioners.

Or that said Conro & Carkin may be ordered and directed to pay to your petitioners the value of the use of said property during said period last above named.

And that the said Conro & Carkin may be ordered forthwith, by the order of this honorable Court, to execute to your petitioners, or to the said provisional assignee, or to the Clerk of this honorable Court, as to the Court may seem meet, a bond, for the use and benefit of your petitioners, conditioned, that they, the said Conro & Carkin, will faithfully deliver to your petitioners the said property, and will faithfully account to your petitioners for the use of the said property, as may be finally ordered and directed by the order of this honorable Court, your petitioners hereby offering and tendering the said sum of forty thousand dollars, for the benefit of the creditors of the estate of said bankrupts, and hereby offering to do what is just and equitable in the premises.

And that your petitioners may have such further and other relief in the premises as the nature of this matter demands, and as to equity shall seem meet; and your petitioners will ever pray, etc.

(Signed,) JEFFERSON HODGKINS.
CHARLES S. CRANE.

CRANE & TATHAM AND JOHN S. COOPER,
Solicitors for Petitioners.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.

Before me, this 18th day of August, A. D. 1875, personally appeared Jefferson Hodgkins and Charles S. Crane, the petitioners whose names are signed to the foregoing petition and who being to me severally known, on oath state that they have each heard the said petition read and know the contents thereof, and that the same is true of their own knowledge, except so much of the same as is stated upon information and belief, and as to these matters they believe it to be true, and except as to so much of said petition as contains statements of conversations and interviews when the petition states that one of said petitioners only was present, and as to such last mentioned statements, each petitioner who is alleged in said petition to have been present at such conversations and interviews, says that the same are true of his own knowledge, and the other of said petitioners says he believes them to be true.

(Signed,)

CHAS. L. DRIESLEIN,

U. S. Commissioner, Northern District of Illinois.

And subsequently and on or about the 15th day of September, 1875, your petitioners by leave of said District Court (said respondents being represented by their respective counsel) filed an amendment to their said petition which was and is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.

United States District Court, for the Northern District of Illinois,
In Bankruptcy.

IN THE MATTER OF HARRY FOX, and WILLIAM B. HOWARD, Bankrupts.	ON THE PETITION OF CHARLES S. CRANE, AND JEFFERSON HODGKINS.

The petitioners, by leave of Court, amend their Petition as follows, viz:

At the end of the 4th line from the top of the 14th page of said Petition, add the following: "And your petitioners further represent unto your Honor, that they are informed and believe, and so charge the fact to be, that the use of said property so sold to your petitioners by said confirmatory order of this Court, entered July 9th, 1875, is of great value to said Conro and Carkin, and that they are now and have been since said 12th day of July, A. D. 1875, making from the use and employment of said property, by reason of their possession thereof, a net gain or profit of more than six hundred dollars per day, which would otherwise have accrued to and been the profit of your petitioners, but for the said wrongful conduct of said Conro & Carkin and said assignee in the premises, and your petitioners charge that said Conro and Carkin will continue so to derive from the use and possession of said property said net profit for a period of more than ninety days after the filing by your petitioners of their said original petition herein, which would otherwise have accrued and been the profit of your petitioners.

And your petitioners further show unto your Honor, that they are informed and believe and so charge the fact to be, that said Albert Conro is a resident and citizen of the State of Wisconsin, and that said Willard S. Carkin is only temporarily residing in said City of Chicago, in said District, but is a citizen of another state, and that the said Conro & Carkin have not, nor have either of them, any property, money or credits within said district or said state of Illinois,

except their pretended claim to said property so delivered to them by said Hancock, assignee as aforesaid, and except their interest in said sum of forty thousand five hundred dollars, which they have paid to said assignee as aforesaid, and which is now in the custody of the Honorable Court."

At the end of the 7th line from the top of the 16th page, add the following:

"And that said Conro & Carkin by the order of this Honorable Court may be charged as Trustees of said property for the use of your petitioners since the said 12th day of July, 1875; and may by like order be held to account to your petitioners for all profits, gains, or advantage, they, said Conro & Carkin, have derived, or which have accrued from the possession and use by them of said property, and that the sum which shall be found due to your petitioners for such profits, in such accounting, may, by like order, be paid to your petitioners out of said forty-thousand five hudred dollars, so paid by said Conro & Carkin as aforesaid, and which is now in the custody of this Honorable Court, and that in the meantime, by like order, that said monies may be retained in the custody and control of this Honorable Court, to answer to the just and lawful demand of your petitioners in the premises."

(Signed,)

CHARLES S. CRANE,
and JEFFERSON HODGKINS.

By CRANE & TATHAM,
and COOPER, GARNETT & PACKARD,
Their Solicitors.

And on the 18th day of August, 1875, a rule to show cause, as prayed for in said petition, was issued out of said District Court in bankruptcy, directed to said Conro, Carkin, Hancock, Fox, and Howard, respondents therein, returnable

on the morning of the 27th day of said month of August. That said rule to show cause was afterwards on the 19th, 20th, 21st, and 24th days of said month of August severally served on all of said respondents, except the said William B. Howard, either personally or by leaving a copy of such rule with a person above the age of 12 years, at the usual place of residence of such respondent, and that said Fox was personally served.

That afterwards and on said 27th day of August, A. D. 1875, said Bradford Hancock filed in said District Court, his answer to said petition in the words and figures following, to wit:

DISTRICT COURT OF THE UNITED STATES FOR NORTHERN DISTRICT OF ILLINOIS.

IN MATTER OF HARRY FOX AND WM. B. HOWARD, BANKRUPTS. } *In Bankruptcy.*

Bradford Hancock, the assignee in this case, makes answer to the petition filed herein on the 18th of August, 1875, by Jefferson Hodgkins and Charles S. Crane, as follows: I never knew or heard of Jefferson Hodgkins till about the time he made the bid in question. I supposed his bid was put in, in his own right and for his own benefit exclusively, and I never knew or heard anything to the contrary from him or anybody else, before the sale to him was vacated.

On July 9th, the day on which the sale to him was confirmed, I showed him a certified copy of the order of confirmation and demanded the purchase money. He did not have it, but named a time when he would pay. He failed to pay at the time named, and then made another similar promise and failed to perform that, and so he promised and failed to perform four or five times. I made no agreement to wait on his promise, but I actually waited till they were broken. I told him repeatedly that if he did not pay at once I would sell to

somebody else, and he told me I might if I could. I had ascertained that he was irresponsible, and I crowded him for payment for that reason, so that if the sale fell through, another might be made as speedily as possible. Previous to Saturday afternoon, the 10th, he had not said a word about anybody else having anything to do with the matter. He then told me that Charles S. Crane was going to "furnish a part of the money." That afternoon was the first I ever knew or heard of Charles S. Crane. If his name was ever mentioned in my presence before, it certainly did not attract my attention, or in any way give me to understand that I had anything to do with him.

Hodgkins did not tell me that he had bid for Crane, or that Crane was a party to or interested in the bid, or had been in any way concerned in making it. To ascertain if there was any truth in the story that Crane was going to "furnish a part of the money," I went with Hodgkins to his office, but he was out. About five o'clock that evening (Saturday) I went to Crane's office again, and saw him for the first time. I told him, in substance, that I had been informed that he was going to advance a part of the money to complete the purchase by Hodgkins, and I had called to ascertain about it. He said there was a company being formed (of which Harry Fox was to be one) to take the property, and Hodgkins and Miller had gone to Milwaukee to see Conro and ascertain how much he would put in, and when the company was formed each one would pay his proportion.

In the whole course of the conversation he did not say or intimate that he owned or controlled the bid, or had any interest in it, or was bound by it, or that he would pay the purchase money. The impression I got from the whole was, that Hodgkins had bid on his own account, and that since his bid had been accepted, a project had been started to get up a company and take the property from him and furnish him the money to pay for it. If successful, he would take the property; otherwise not. I thought it was entirely optional with Crane and

the others whether they would go into the scheme or not, and I did not elicit anything which led me to think that anybody but Hodgkins was legally bound by the bid. If I had supposed that Crane was liable on the bid, I should have demanded the money from him, as I had of Hodgkins. At last I told Crane that all this talk about getting up a company was very well, but what I wanted was the money — that here was a sale of $40,000 and I had not as yet been able to get even a deposit on it. He said he would see I had a deposit the first thing Monday morning. I asked him if any of the property should be lost or destroyed before the sale was completed, who would stand the loss. He said he did not know. This was the substance of the whole conversation. I made no promise to wait till Monday morning, and I did not consider his promise to make a deposit as at all binding, or that it was at all certain to be fulfilled. I left him thinking that there was nothing fixed or definite about it, and that they intended to figure upon it as long as they pleased, and then take the property or not as they should see fit. I considered it of great importance that the matter should be speedily brought to a close, because the property was widely scattered, part at South Chicago, part at Sheboygan, Wis., and part here in the river, and it was perishable and at risk in many ways. In view of these facts, I thought it my duty to find another purchaser if I could, and I considered it fortunate to get the offer from Conro & Carkin on the morning of the 12th. That offer was procured by me, not volunteered by them. If Crane had offered a sufficient deposit "the first thing Monday morning," I might have accepted it, although I did not consider myself bound to, but at about eleven o'clock, when I applied for the vacation of the sale, I considered that that time had fully passed with nothing done, as I expected it would. I did not suppose there was any rule of law requiring notice of the application to be given to Hodgkins, or testimony to be formally taken, and that is the only reason why I did not give such notice. I have carefully read and considered all the statements in the petition of Hodgkins and Crane, and I say distinctly and positively that

in so far as they conflict with the statements above, they are untrue.

In view of the conflict about these facts, it seems to me that for the due ascertainment of the truth the testimony should be taken in such a way as to allow of cross-examination. I think the interest of the estate would be prejudiced by granting the order prayed for, for the following reasons:

1st. The last bid was the highest, and as the sale has been executed no question can arise as to the identity of the property and the completeness of the delivery.

2d. The first bid contained a specification of the property in general terms, and now the purchaser would be able to say that it was not all furnished to him, or that it was in worse condition, by use or otherwise, or in a different place, and so refuse to take it, or require an abatement in the price, which might lead to a long and difficult inquiry.

3d. The property is not in my hands and I cannot deliver it.

4th. Conro & Carkin having purchased, paid for, and taken delivery of the property, in pursuance of an order which the Court had jurisdiction to make, I am advised that it is at least doubtful whether their title is not perfect, even if the Court erred.

5th. I am advised that it is doubtful whether the Court could take the property from them in a summary way, and whether it would not be necessary to litigate their title in a regular action at law. If it would, it would cause great delay, and much of the property would be worn out or deteriorated in value before the end would be reached, If the delay should extend to the close of navigation this year, Hodgkins & Crane would not probably take it, and it could not be again sold for anywhere near the amount now received.

6th. Hodgkins & Crane have thus far put up no money and they may safely back out at any time. Before they are heard they should actually pay the amount of their bid into Court.

It seems hardly necessary to say that I have had no interest in the matter, except to do my duty for the best interest of the estate.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT AND STATE OF ILL., } ss.
COOK COUNTY.

Bradford Hancock being duly sworn, says that he has read the foregoing answer and knows the contents thereof, and that the statements therein made are true of his own knowledge, except such as are made on information and belief, and as to those he believes them to be true.

BRADFORD HANCOCK.

Subscribed and sworn to before me this 23d day of August, 1875.

NATHANIEL BACON,
[Notarial Seal.] *Notary Public.*

And afterward, and sometime between the said 27th day of August and the 6th day of September, then next following, as your petitioners are informed and believe and so charge the facts to be, Edward Crane, Esq., one of your petitioners' solicitors, applied to said District Judge in Chambers, and asked for an order of reference to the proper register in bankruptcy of the matters contained in said petition and the said answer of the assignee thereto, to take proof thereon. Whereupon said District Judge, as your petitioners are informed, believe, and so charge the fact to be, required of your petitioners that they should pay forty thousand dollars into said District Court before your petitioners would be entitled to be heard.

And afterwards, and on the 6th day of September fol-

lowing, your petitioners paid into said Court the said sum of forty thousand dollars, as and for the purchase price of said property belonging to said bankrupts' estate, as required by said District Judge, by delivering to the said District Judge a certified bank check for that amount, which was afterwards duly paid.

And at the same time and place, one of the solicitors for said Albert Conro and Willard S. Carkin applied for a continuance of the rule, and time to answer as to said Conro and Carkin, which application was, by said District Judge, granted, and the time for said Conro and Carkin to answer was extended until the 13th of said month of September. And afterwards, and on the said 13th day of September, said Conro and Carkin filed in said District Court in bankruptcy their joint answers to said petition, which was in the words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN THE MATTER OF HARRY FOX and WILLIAM B. HOWARD, bankrupts, and of the rule therein upon ALBERT CONRO and WILLARD L. CARKIN, *et al.*, to show cause, entered on the 18th day of August, A. D. 1875.

And now comes the said Albert Conro and Willard L. Carkin, and for answer to the said rule and the petition on which the same was entered, these respondents say:

First, That they are advised by counsel and respectfully submit that the petitioners have no right or interest in the premises, and no such standing in Court or relation to the said bankruptcy proceedings as entitles them to call these respondents to account, touching any of the matters set forth or referred to in the said petition, and that the

respondents for this reason ought not to be required to answer the said petition. And these respondents do and will insist upon this objection to the said petition and the rule to show cause granted thereon, and they ask the same benefit thereof as if they had demurred to the said petition.

Second, That they, the said Albert Conro and Willard L. Carkin, are strangers to the said bankruptcy proceedings, and in no way parties or privies thereto, except as *bona fide* purchasers for value of the property referred to in the said petition, which property was sold and delivered to them by the provisional assignee of said bankrupt pursuant to the order and approval of this honorable Court. That said property was paid for in full by these respondents at or before the time of such delivery, and has ever since been in their possession. These respondents do, therefore, respectfully submit to the said Court, that the several matters sought to be drawn in question in and by the aforesaid petition, so far as they affect these respondents, can be properly adjudged and determined only in a proper suit at law or in equity, according to the due course of law, and that this Court hath not acquired and doth not possess jurisdiction to adjudge and determine the same in a summary manner upon a rule to show cause as aforesaid. And these respondents do and will insist upon this objection, and they respectfully ask that the said rule to show cause may for this reason be discharged so far as they are in any manner concerned as parties respondent thereto.

Third, That these respondents have been engaged for many years as contractors upon public works, in the business of dredging and deepening rivers and harbors, building piers and breakwaters, and other like pursuits—the said Albert Conro for the period of fifteen years and upwards, and the said Willard S. Carkin for the period of ten years and upwards; and that for some time before the purchase by them of the property referred to in the said petition they had contemplated forming a partnership for the pur-

pose of prosecuting the before mentioned business on joint account. That as a part of their plan they had thought of and discussed the project of purchasing the dredging machinery of Fox and Howard after their bankruptcy, if it could be bought at a satisfactory price; but this idea was abandoned when they learned about the second of July last, or soon thereafter, of the bid made by the said Hodgkins for the said property. That on Sunday the eleventh day of July, 1875, one of the respondents was informed that the said Hodgkins had made default in paying for the property, and that the provisional assignee, Bradford Hancock, had expressed his apprehensions that the said Hodgkins did not intend to take and pay for the same as he had proposed or agreed. At a subsequent interview upon the evening of the same day the assignee represented to the said respondent, that the said Hodgkins had not complied with the terms of his offer, that he had repeatedly called upon him for the money and was tired of running after him, and that he did not believe that he meant to complete the purchase. The said assignee, in the course of that conversation, informed the respondent above referred to, that if he would come to his office the next morning and bring with him a written bid or offer to buy the same property for the sum of $40,500, or upwards, accompanied by the money, he would report the offer to the Court and recommend its acceptance. After reflecting upon this proposition the said respondent concluded to act upon it, and accordingly waited the next morning, July 12th, upon the said assignee, and made a formal written offer to buy the property in the firm name of Conro & Carkins, at the price named, to-wit: forty thousand and five hundred dollars, and to assume in addition certain liens or claims upon a portion of it held by different parties, which are particularly specified in the said offer, which is now on file in the said District Court, and to which reference is hereby made for a more full description of its contents. The said respondent then and there delivered to the said assignee his certified check upon the National Bank of Commerce of the city of Chicago, for the sum of $15,500,

and at the same time, or within a few minutes afterwards, his certified check upon the First National Bank of the same city, for $25,000, to be retained by the said assignee in payment for the said property, should the said bid be accepted. The said offer was therefore reported by the said assignee to Judge of the said District Court, and an order was entered of record by the said Judge upon the same day, that the said bid be accepted and that all the property included in the bid (describing it specifically) "be and the same hereby is sold to the said Conro and Carkin for the sum of $40,500, the purchasers assuming the claim of Anson Fox to the tug Hewitt, and assuming and agreeing to pay all custodian charges on said property, at South Chicago and Sheboygan, and further, that on the payment of the said sum of $40,500 to him, the provisional assignee deliver said property with proper bills of sale therefor"—as by the said order, now of record in said District Court, reference to which is hereby made, will fully and at large appear. That thereupon the said provisional assignee proceeded to complete the said purchase and sale by delivering to these respondents a formal bill of sale of the said property and placing them in possession of the articles sold. That the assignee immediately afterwards deposited the aforesaid checks with the Clerk of the said District Court, and the same were presented and paid in due course; and that these respondents have since paid the claims and charges upon the said property which they assumed and agreed to pay, as provided in the aforesaid order of said Court, and they are now in possession of the said property, using it as their own, as they have good right and lawful authority to do.

Fourth. That the charge made in the said petition to the effect, that there was any combination or contrivance between these respondents and the said assignee, or between them and the said Fox and Howard, for the purpose of buying in said property for the benefit and advantage of the said bankrupts, is wholly destitute of truth. The said Fox and Howard had no interest whatever in the said purchase, nor

had either of them since said purchase even been interested in the ownership of the said property, or any portion thereof. These respondents deny all the charges and imputations of fraud and bad faith preferred against them in the said petition; and they assert that the said purchase was in all respects, so far as they are concerned, made in good faith, and without notice of any fact tending to show any improper conduct on the part of the said assignee, or any unfair or ungenerous treatment by him of the said Hodgkins, or either of the said petitioners.

Fifth. That no portion of the said sum of $40,500 paid by these respondents for the said property, was furnished by the said Fox and Howard, or either of them; but, said money was all advanced by these respondents or procured upon their own credit; and all charges or insinuations to the contrary contained in the said petition are wholly untrue.

Sixth. That these respondents have no personal knowledge respecting any of the conversations, understandings, or transactions, had between the said provisional assignee and the said petitioners, or either of them, relating to the proposed purchase of the said property by the said Hodgkins, set forth or referred to in the said petition; and that they never had any knowledge or information of any of the alleged facts in that behalf alleged in the said petition, until after the completion and final consummation of the aforesaid sale to these respondents as hereinbefore set forth; but these respondents are informed, and they believe such information to be true, that the statements and charges contain in the said petition in relation to what took place between the said provisional assignee and the said petitioners, between the 9th and 12th days of July, 1875, are in all material respects, distorted, or untrue; and these respondents claim the right, should the court assert the power to exercise jurisdiction over the subject-matter of this controversy, in this summary mode upon the rule to show cause entered herein, to cross-examine the witnesses, whose evidence may be offered against them, and to introduce testimony in their own behalf; and they insist that

the said petitioners be required to furnish strict proof of all the material facts alleged in their said petition, which are not herein admitted by their respondents according to the due course of law and the established rules of evidence.

Seventh. That these respondents have no personal knowledge respecting the ability or intention of the said Hodgkins, or the said Crane and Hodgkins, to raise and pay over the money bid for the property in question by the said Hodgkins on the second day of July last; but their respondents are informed that the said Hodgkins was repeatedly requested by the said provisional assignee to complete his proposed purchase by the payment of the money according to the terms of his bid; and that he failed to pay the money, or to give any satisfactory or reasonable answer to the said assignees, of his ability and intention to do so; but, on the contrary, when admonished by the said assignee, that if the money were not paid, or a sufficient deposit made to secure the completion of the purchase, he would again offer the property for sale, the said Hodgkins replied that he was at liberty to do so if he thought proper, but he did not believe any one else could be found to buy the property for the price he had agreed to give.

Eighth. That these respondents have no personal knowledge respecting the alleged interview between one of the members of said bankrupt firm of Fox and Howard, and the Board of Public Works referred to in the said petition. But these respondents are informed that, on or about the fifth of April, 1875, several weeks before the petition in bankruptcy was filed in this court against the said Fox and Howard, the said Fox and Howard became bidders for certain public works which had been advertised by the Board of Public Works of the city of Chicago, and that they were the lowest bidders. That no award of that work was made by the said Board of Public Works, until about the sixteenth day of July, 1875, on which day the contract was awarded to the said Fox and Howard. That afterwards, on the first day of August, 1875,

the said Fox and Howard dissolved their co-partnership by mutual consent, and divided between them their outstanding contracts; that the said Fox assumed the contract in question, and afterwards agreed to transfer the said contract to the firm of Conro, Carkin & Co., which firm is composed of the said Albert Conro, Willard S. Carkin and Christopher H. Starker and Henry Starker, of Milwaukee, and no others. That said firm of Conro, Carkin & Co., have employed the said Harry Fox as their superintendent to oversee and manage a portion of their work, namely, that part of it undertaken in and about Chicago; that said Fox is in no other way connected with said firm; that as such superintendent, he has had charge of some of the property purchased by their respondents of the said provisional assignee, and has used the same in and about the business of the said firm of Conro, Carkin & Co., and in no other way, with the exception of one tug, a dredge, a pile-driver and four or five scows, which these respondents lent to the firm of Fox and Howard for a few days in July last, to enable them to finish up a job of work which was at the time of said purchase nearly completed.

All of which matters and things these respondents are willing to aver, maintain and prove, in any suit that may be brought against them according to the due course of law, and they humbly pray that the said rule entered herein against them may be discharged, and that they may be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) ALBERT CONRO,
WILLARD S. CARKIN.
By ALBERT CONRO.

AYER & KALES,
Solicitors and of Counsel for said Respondents.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF WISCONSIN, } *ss:*

Albert Conro, being duly sworn, deposes and says, that he has heard read the foregoing answer by him subscribed,

and that he knows the contents thereof, and the same is true of his own knowledge, except as to those matters which are stated upon information and belief, and as to those matters he believes it to be true; and this affiant further says, that Willard Carkin, the other respondent named in the foregoing answer, is absent from the State of Illinois, and has been absent ever since the rule to show cause entered herein was granted by the said district court, and for this reason has been unable to sign the said answer in person, or to verify the same by his oath.

(Signed) ALBERT CONRO.

Sworn to before me this 11th day of September, 1875.

(Signed) ALFRED D. CARY,
United States Circuit Court Commissioner,
Eastern District of Wisconsin.

And the said respondent, Harry Fox, who was as aforesaid duly served in person with a copy of said rule, has never made any answer thereto, as your petitioners are informed, believe, and so charge the fact to be.

And afterwards, and on or about the 15th day of September, the said respondents, Conro and Carkin, obtained leave to amend their answer, if they should desire, provided such amendments were filed by Monday, September 20th, 1875; and your petitioners are informed and believe, and so charge the fact to be, that no amendment to said answer was ever filed.

And on or about said 15th day of September, the said district court, sitting in chambers, entered an order on the application of your petitioners that the issues of fact raised by said petition, and the said answer thereto, be referred to Homer N. Hibbard, Esq., one of the registers in bankruptcy of said court, to take proof thereon.

And afterwards, and on or about the 17th day of September, your petitioners, by their counsel, commenced to take such testimony before such register, which testimony was duly re

duced to the form of depositions of the respective witnesses who were called on behalf of your petitioners, said Bradford Hancock, assignee, and said Conro and Carkin; and said depositions were afterwards returned into said District Court.

And your petitioners caused abstracts of said depositions to be made, which said abstracts of said depositions contain the substance of the respective depositions of said witnesses, and fairly set forth the same.

And your petitioners file herewith, and make a part hereof, said abstracts of all said depositions so returned into said District Court, and pray that the same may be considered by your Honor as the evidence submitted to said District Court on behalf of your petitioners and said respondents respectively; and your petitioners mark said abstracts "Exhibit D." And your petitioners further show unto your Honor that, at the time of the decision hereafter mentioned of the said matters in controversy between your petitioners and said respondents, there were on the files of said District Court, in the matter of said bankruptcy, certain other papers and documents which your petitioners submit are and were material to said controversy; and your petitioners charge that the same were known to said District Court at the time of rendering said decision. That said papers and documents are as follows,to wit:

Petition of Bradford Hancock, provisional assignee, filed June 19, 1875.

Order of Court on said petition, entered June 19, 1875.

Report and supplemental report of assignee, with bid of Albert Conro, filed July 2, 1875.

Order of Court accepting bid in name of J. C. Hodgkins, unless objections should be filed, entered July 2, 1875.

Petition of assignee to have the sale on the bid in name of J. Hodgkins confirmed, filed July 9, 1875.

Order of Court confirming the sale on said bid, entered July 9.

Petition of Bradford Hancock to have the sale on said bid set aside, and a re-sale of said property made to Conro and Carkin on their bid attached to said petition, filed July 12, 1875.

Order of Court in accordance with said petition, entered July 12, 1875.

And your petitioners attach hereto copies of said papers and documents, entitling each one, respectively, for convenience, and mark the same "Exhibit C," and make the same a part hereof.

And your petitioners further represent and show unto your Honor, that after they had called at the office of said Bradford Hancock, assignee, in the forenoon of Monday, July 12th, for the purpose of paying a deposit on account of said purchase and then learned that the order of sale on their said bid had been set aside and a resale of the property ordered, your petitioners, together with James E. Miller, went directly to the Honorable the District Judge of said court in chambers, and complained to him of the action which had been taken, and your petitioner, Crane, then and there stated the arrangement which had been made between him and said assignee, for the payment of a deposit on account of the purchase of said property, on the previous Saturday evening, and requested the District Judge to direct the assignee to delay delivering possession of the property on the second sale until your petitioners could have an opportunity of properly presenting the facts to said District Court, and the said District Judge then and there stated to your petitioner, that said assignee had first applied to him to set aside said sale on the Hodgkin's bid at about 9 o'clock that Monday morning, but that he, the District Judge, had refused to entertain the application so early in the morning; that the assignee had stated that he had run after your petitioner Hodgkins, to get the money on the bid, but had been unsuccessful, and that when the assignee had

come again and made application, about ten o'clock, he, the District Judge, had granted the order, not knowing that your petitioner Crane had any connection with said bid. Your petioner Crane then stated to the District Judge that the assignee did not deny that he had made a positive agreement with your petitioner Crane, that the latter was to meet said assignee at his office on said Monday morning, and pay to said assignee a deposit on account of said purchase, but that said assignee excused himself for selling the property to other parties on the ground that the morning was gone. Whereupon said District Judge stated that he was sorry that your petitioner had lost a good bargain, but would decline to order the proceedings to be stayed, or to set aside the sale on the new purchase.

And at the time said application was made to the District Judge, said assignee, as your petitioners are informed and believe, and so charge the fact to be, had not delivered the said property so sold to your petitioners out of his possession to said Crane and Carkin or either of them, nor to any one for them.

And afterwards and during said 12th day of July, your petitioner made or caused to be made two other applications to said District Judge for relief against the fraudulent conduct of said assignee in attempting to deprive your petitioners of the possession and ownership of said property, but the same were also unsuccessful.

And your petitioners further show unto your honor, that afterwards, and on or about the 13th day of August, 1875, on a petition of review before the Honorable Court under section 4,986 of the Revised Statutes of the United States brought by your petitioners as parties aggrieved by the action of said District Court in entering its said order of July 12th, and against the said Hancock, Conro and Carkins, and Fox and Howard, the appearance of said Hancock, Conro and Carkin was entered in said matter before this Honorable Court by H. W. Tenny,

Esq., one of the attorneys, counselors at law of this Court, who then and there stated to the court, in the presence of the court, said Willard S. Carkin, and your petitioners, that he appeared in said matter as attorney for said respondents, and no exception or objection was taken by said respondents or either of them to the jurisdiction of this court or the manner of its exercise.

And your petitioners further show unto your Honor that afterwards and on or about the 4th day of November, 1875, the matters in controversy between petitioners and said respondents upon the petition filed by petitioners in said District Court, and their said amendment to said petition, and the said answers of the respondents, and said hearing was had before said District Court upon said petition and amendment thereto, said answers and the testimony of said witnesses as contained in said depositions and the other of said documentary evidence on file in the matter of said bankruptcy.

And your petitioners charge that the said evidence before the District Court upon such hearing, together with the personal knowledge of the District Judge as to what had occurred in his presence on Monday, July 12th, 1875, as herein stated, established and proved the following state of facts, viz :

1*st. That the bid of your petitioners of* $40,000 *dollars* for said property belonging to the estate of said bankrupts was authorized by your petitioner, Charles S. Crane, who directed your petitioner Hodgkins, as the superintendent and agent of his, said Crane's dredging business, to make such bid for the property for said sum; with the understanding between your petitioners that said Crane was to give said Hodgkins an interest in the property or the profits derived from the use of the same.

2d. That said bid was put in by said Hodgkins in his own name, but that said Bradford Hancock, assignee, was told at the time said bid was put in, on July 2d, that your petitioner Crane was responsible for and had authorized the bid,

and that the name of said Hodgkins was signed to the said bid without any design or intention of concealing the interest of said Crane therein.

3d. That after the final confirmation of said bid of your petitioners, about two o'clock in the afternoon of Friday, July 9th, said assignee was again told that your petitioner, Crane, would furnish the money in payment for said bid; and in the afternoon of said day the assignee went to the office of said Crane to make arrangements with him for delivering the property and receiving the money therefor, but did not see said Crane.

4th. That in the afternoon of the following day — Saturday, July 10th — about five o'clock, said assignee again went to the office of the said Crane for the same purpose, and it was then and there definitely arranged and agreed between the assignee and Crane, that Crane should pay a deposit on account of the purchase to the assignee at the office of the latter, on Monday morning, July 12th, and commence receiving the property, and the balance of the purchase money was to be paid as soon as the property could be turned over; that the amount of the deposit which Crane should pay was not fixed upon, but was left to Crane's discretion by the assignee, for the reason that the latter believed said Crane to be financially responsible and able to pay said bid, and would so pay the same and take the property.

5th. That your petitioners were at the office of said assignee on said Monday morning, at about the hour of eleven o'clock, and said Crane in accordance with the arrangement of the previous Saturday evening, had taken with him twenty thousand dollars in certified bank checks, and handed the same to said assignee as a deposit on account of said purchase, according to such previous agreement, and was then and there ready and expected to receive the property and pay the balance of the purchase money therefor as soon as the property could be delivered.

6th. The assignee did not receive the money from said Crane and deliver the property to petitioners, because he had already procured the Court without notice to petitioners, and without their knowledge, to set aside the rule to petitioners on the Hodgkins' bid, by means of an application made first at about nine o'clock *that* morning, and afterwards at about ten o'clock that morning to the Judge of that Court in which application said assignee falsely and fraudulently stated that he had made frequent demands upon said Hodgkins for the payment of the purchase money, and that Hodgkins had neglected to pay the same and that he, the assignee, had been unable even to get a deposit on account of the purchase ; and said assignee also fraudulently suppressed the fact from the knowledge of said District Court, and from the Judge thereof, that said Crane had authorized and was responsible for said bid, and was pecuniarily able to pay therefor ; and that said assignee had arranged with said Crane in the afternoon of the previous Saturday, July 10th, to receive from the latter a deposit on account of said purchase that Monday morning, and to deliver the property on the same to petitioners, and by such false and fraudulent representations the assignee procured the District Court to set aside the confirmation of said sale to petitioners, and to order a resale of said property to the respondents, Conro and Carkin.

7th. That immediately after learning that the order of confirmation of sale to petitioners had been set aside and a resale ordered, and before the property had been delivered on the new sale, petitioners went to the District Judge in Chambers and stated to him the material facts in the matter, and requested that further proceedings might be suspended and the property allowed to remain in the possession of the assignee until your petitioners should have an opportunity of properly presenting the facts to the District Court; but their request was by the District Judge refused, and the property was subsequently delivered to the respondents Conro and Carkin, the pretended purchasers thereof under said order of sale of July 12th.

8th. That at and before the time said order of the District Court of July 9th, conferring the sale on the bid of your petitioners, was entered, Conro and Carkin both knew that your petitioner Crane had authorized and was responsible for said bid in the name of your petitioner Hodgkins, and that he was pecuniarily able to pay the amount called for therein, and that at the time said confirmatory order was set aside and the resale ordered, said Conro and Carkin both knew that your petitioner Crane expected and intended to carry out the terms of said sale on that day, Monday, July 12th, and said Carkin, Harry Fox, and the assignee, believed he would do so unless he should be prevented therefrom by having the sale on petitioners' bid surreptitiously and fraudulently set aside and a resale ordered before he should be present with the money as a deposit on account of the purchase, and this they procured to be done by the assignee; and said Conro approved and ratified their action afterwards and in the afternoon of July 12th.

9th. Said Conro, Carkin, and Harry Fox, and each of them, on said 12th day of July, when said sale was made to Conro and Carkin, occupied relations of trust and confidence towards your petitioners respecting their said bid, by reason of having procured an interview with your petitioner Crane during the previous week, and about July 8th, for the purpose of obtaining from him an interest in said property for said Harry Fox, if the property should finally be awarded to your petitioner on said bid; and said Crane agreed in that event to sell to said Harry Fox an interest in the property, on the solicitation of said Conro and Carkin as friends of said Fox, and with the understanding that Conro as such friend would advance the money necessary to purchase said interest for Fox, and that arrangement so far as said Crane, Conro, and Carkin were concerned, was still subsisting on Monday, July 12th.

But by the sworn evidence of said Conro and Carkin, as contained in their respective depositions, filed herein, they had made a definite and positive arrangement with your petitioner Crane, on or about said 8th day of July, to buy all the prop-

erty so bid for by your petitioners, and also all of said Crane's other dredging property, for the sum of $11,000, and they to have the option of forming a company with Crane as a partner, having an interest in said property, or of leaving him out altogether, and that the bid of your petitioner should remain and said Conro and Carkin should receive the property from petitioners if their bid should be approved.

10th. That in procuring the rescission of said confirmatory order of sale to petitioners, and making a resale of the same property to Conro and Carkin, they, and the assignee and Harry Fox, were proceeding to carry out by fraudulent means the following scheme: The said Fox, one of the bankrupts, was desirous of procuring an interest in said property together with said Carkin, and Albert Conro was willing to advance a sufficient sum of money to aid said Fox in procuring such interest.

Soon after the second day of July, when said bid was made in the name of said Hodgkins, said respondents learned that said Crane was the party responsible for said bid and controlled it. At the instance of said Fox the meeting of July 8th was called, at which were present Conro, Carkin, Fox and Crane, for the purpose of ascertaining the disposition of said Crane towards giving said Fox an interest in said property. That was found to be favorable, and the parties separated with the mutual understanding that Crane, on account of the previous intercession of his uncle, Martin Ryerson, on behalf of said Fox, would allow the latter to have such interest, and that Conro would advance the money for Fox to pay for such interest. Said Carkin expected that he would also have an interest; but that was not mentioned at this interview, and Crane did not know of such expectations. Subsequently, in the afternoon of July 10th, Crane had a further interview with Fox, in which he proposed definite terms of arrangement for the management of the property; with which Fox was entirely dissatisfied, and with which Carkin was also dissatisfied, as it left him without any interest whatsoever.

Crane however determined to carry out the arrangement, in the belief that Conro, who was to furnish the money for Fox, would control him, and would see that what he proposed was for Fox's best interest. Acting on that belief, he sent Hodgkins and Miller to Milwaukee that night to see Mr. Conro. After the interview with Fox, Crane made the arrangement with the assignee to pay a deposit on account of the purchase on Monday morning, and to begin receiving possession of the property.

On the following Sunday, July 11th, Carkin and Fox having determined to prevent the property from coming into the hands of petitioners, and to get it themselves, or into hands where they could control it, sent for the assignee to come to Fox's house, which he did; and there the scheme was concocted and agreed upon, for the assignee early next morning, and before Crane could be on hand with the money, to report to the District Judge that Hodgkins had not paid for the property; that the assignee had made frequent demands upon him, and had been unable to get even a deposit on account of the purchase; and to suppress all mention of Crane's name, or the agreement with him of the previous Saturday evening; and, to report a bid in the name of Conro and Carkin for five hundred dollars more than the former bid, and thus by representations which were false in fact and fraudulent in effect to procure the confirmatory order of sale on petitioners' bid to be set aside and a resale ordered on the bid of Conro and Carkin — all before petitioners should know what was being done — and then for the assignee to deliver possession of the property to Conro and Carkin, who should hold and use it, so far as said Conro was concerned, for the benefit of Fox. That said fraudulent scheme was carried out, and Conro and Carkin obtained possession of said property and deprived your petitioners of such possession by means of said scheme.

11th. That said Conro, Carkin, and Fox, having obtained possession of said property and prevented the same from

coming into the possession of petitioners by the fraudulent means resorted to by them have since the 12th day of July been using and employing such property (which has been managed and controlled by said Fox as the nominal superintendent for said Conro and Carkin) with great profit, and that the net profits realized therefrom have exceeded 30,000 dollars.

12th. That Conro is a resident and citizen of the State of Wisconsin, and Carkin is a citizen of the State of New Hampshire, residing temporarily with said Fox in the the City of Chicago, in the Northern District of Illinois. That neither of them have any real estate in the State of Illinois nor any other property aside from the property in controversy adequate to satisfy petitioners for the amount of the net profits realized from the use of said property since the 12th of July last past, except the sum of Forty Thousand Five Hundred dollars, now deposited in the registry of said District Court.

13th. That on the 13th day of August, 1875, the said assignees, Conro and Carkin, entered their appearance by counsel in this Honorable Court to a petition of review brought against them by your petitioners, under section 4986 of the Revised Statutes of the United States, for the purpose of procuring the said order of the District Court entered July 12th, 1875, to be set aside, and the possession of said property delivered by said respondents to your petitioners, and that said respondents made no objection to the jurisdiction of this Honorable Court in the premises or the manner of its exercise as invoked by petitioners.

And your petitioners are advised by their counsel, and they humbly submit, that the following propositions contain the principles of law applicable to said controversy, viz:—

1st. That when the bid of Forty Thousand dollars was made in the name of said Hodgkins, and who was authorized by said Crane to make the same for him, (Crane), and the assignee was informed of that fact and so received the bid,

that then said Crane became and was a party to said bid and was bound thereby.

2nd. That the order of confirmation on said bid, entered July 9th, having mentioned no time within which the purchase money was to be paid, but having directed the assignee, upon receipt by him of the amount of the bid, to transfer the property to the bidder, left the time and manner of payment to be arranged by the assignee, as the officer of the Court, in a reasonable manner. And that when the assignee arranged with said Crane for the payment of a deposit on account of the purchase (the balance to be paid on delivery of the property) on Monday morning, July 12th,—only 1½ working days after the confirmation of the sale—such arrangement was a reasonable one and gave petitioners all of Monday forenoon in which to make such deposit.

3rd. Petitioners having complied with that arrangement and tendered a deposit of $20,000 at about 11 o'clock on said 12th of July, and being ready to receive the property and pay the balance of the purchase money that day, were in no default; and by reason thereof, and of said confirmatory order of sale of July 9th, they were entitled to receive title to and possession of said property on said 12th day of July.

4th. Petitioners' right to title and possession was not divested by the order of the District Court of July 12th, (which was entered without notice to petitioners or either of them) and neither of the respondents could obtain any title to or possession of said property by virtue of said order, which was not subject to be divested by the further order of said District Court, or by this Court on review, on the application of said petitioners.

5th. Conro and Carkin having obtained possession of the property with both constructive and actual notice of petitioners' rights thereto, should be ordered to deliver it up to petitioners.

6th. Conro and Carkin having obtained the only title to or right to possession of said property which they have ever had, or now claim, by virtue of the order of the District Court of July 12th; and that order having been procured by the fraudulent conduct of said assignee in combination and conspiracy with said Conro and Carkin and Harry Fox, the said order should be finally rescinded for such fraud, and said Conro and Carkin ordered to deliver up the property to petitioners.

7th. Conro and Carkin having prevented the property from coming into the possession of your petitioners on the 12th day of July, and having obtained the possession thereof on that day for themselves, by fraud and conspiracy, and having since that time been deriving large profits from the use of said property, they should be ordered to account to your petitioners for such profits as the constructive trustees of your petitioners, and said District Court should have ordered an account to be taken of such profits.

8th. On account of the non-residence of said Conro and Carkin, and because they have no property within this State out of which the petitioners could collect by the process of said District Court the amount of such profits, except the $40,500 paid into the registry of said court, the court should therefore retain said moneys in its custody subject to any final order on such accounting.

9th. The District Court had jurisdiction over the subject matter of the controversy: exercised in a summary way, by reason of the property in question being a part of the assets of the bankrupts and in the possession of their provisional assignee in bankruptcy at the time of the adjudication, and that possession could not be divested by the fraud of respondents, practiced upon the court and upon petitioners, because said Conro & Carkin, by bidding for said property at a judicial sale and obtaining possession by such judicial sale, thereby submitted themselves and the property to the jurisdiction of the District Court, in bankruptcy, as to all matters connected with such purchase.

Because on a petition of revision in this court between the same parties, and concerning the same controversy, and where the jurisdiction of the court was invoked in the same summary way, respondents entered their appearance by counsel and took no exceptions to the jurisdiction of this court or the manner of its exercise, and they thereby waived all objections to the jurisdiction of the Circuit and District Courts, and to the mode of the exercise of such jurisdiction.

And your petitioner further show unto your honor, that after hearing the counsel for petitioners and respondents on said 4th and 5th days of November, the said District Court took the matter in controversy so submitted on the evidence under advisement.

And your petitioners further show unto your honor, that on the 6th day of March, A. D. 1876, the said District Court, after having considered of the matter submitted to it, delivered its decision of and concerning the said matters in controversy in and by which said decision the said District Court refused all relief to your petitioners in the premises, and then and there ordered that this said petition and the prayer thereof, and this said amended petition, and the prayer thereof, be dismissed at the costs of the petitioners to the trial. To which decision and ruling of the said District Court your petitioners, by their counsel, then and there excepted. And then and there gave notice in the presence and hearing of the counsel for respondents, said Conro, Carkins, Harry Fox, and Bradford Hancock, of the intention to immediately file a petition of review in this honorable court for the review and reversal of the said action of the District Court in the premises, and your petitioners annex hereto and make part hereof, a copy of the said decision of the said District Court, marked Exhibit "G." And your petitioners represent and show, and they insist unto your honor, that the said District Court, in its said decision and in directing said order to be entered, refusing the prayer of your petitioners and dismissing their said petitions, erred in its finding of the facts and its ruling

upon the law, and they submit unto your honor that the facts are disclosed in the said petitions and answers, and evidence submitted before the said District Court were and are as hereinabove more particularly set forth in the several paragraphs numbered respectively from one (1) to thirteen (13) inclusive, and that the law applicable to the said facts your petitioners submit, is correctly stated in the foregoing paragraphs, numbered from one (1) to nine (9) inclusive.

Wherefore, as your petitioners are parties aggrieved by the action of the District Court in the premises, under and by virtue of section 4896 of the Revised Statutes of the United States, they bring this their petition of review before this honorable court for the revision and revisal of the action of the said District Court sitting as a Court of Bankruptcy; and they humbly pray unto your honor that the action of the said District Court in the premises may be revised and reversed by the court in this trial.

That it may please your honor to enter an order requiring and commanding the said respondents, Albert Conro, Willard S. Carkin, Harry Fox and Bradford Hancock, to deliver to your petitioners all the said property sold to your petitioners, by virtue of the confirmatory order of sale of said District Court of July the 9th, 1875; and that on such delivery being made, the said respondents shall be perpetually enjoined by the further order of this court from in any manner interfering with the possession or ownership of the said property by your petitioners.

That it may further please your honor to order a reference before the Master in Chancery of this honorable court, or some other proper person by law authorized, to take and state an account of the profits derived by the said respondents, or any of them, from the use of said property in controversy, from the 12th day of July, A. D. 1875, to the time of the taking and stating said account, and that said respondents shall, by like order of this honorable court, stand charged with said profits as the

trustees of your petitioners, and that if such profits shall amount to a sum equal to or less than the sum of $40,500, that the same may be ordered to be paid to your petitioners out of said sum of $40,500 deposited in said court by said Conro and Carkin; and that if the amount of said profits shall exceed the said sum of $40,500, that the said Conro and Carkin may, by like order of this honorable court, be required to pay such excess over and above the said sum of $40,500 to your petitioners, or into this court, for the use of your petitioners, and that the said sum of $40,500 now in deposit in said District Court, may also be paid to your petitioners, and that in the meantime said respondents, and each of them, may be restrained and enjoined by the order of this court from taking or receiving said sum of $40,500 now in the custody of said District Court, or that said District Court may be ordered to retain said sum of money in its custody until the final and further order of this court in the premises.

May it please your honor to grant a further order requiring said respondents, Conro, Carkin, Hancock and Harry Fox, and each of them, within a short day, to be fixed by the court, to appear before this honorable court and to make answer unto the premises.

And may it please your honor to grant unto the said petitioners, and each of them, such further and other relief in the premises as the nature of the case demands, and as shall be agreeable to equity and good conscience, and as to the court shall seem meet.

And your petitioners will ever pray, etc.

CHARLES S. CRANE,
JEFFERSON HODGKINS.

CRANE & TATHAM, *Solicitors for Petitioners.*

COOPER, GARNETT & PACKARD, *Of Counsel.*

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

Before me this 6th day of March, A. D. 1876, personally appeared Charles S. Crane and Jefferson Hodgkins, the petitioners whose names are signed to the foregoing petition, who, being by me duly sworn on oath, state that they have heard read the foregoing petition by them subscribed, and know the contents thereof, and that the same is true of their own knowledge, except so much thereof as is stated on information and belief, and as to these matters they believe it to be true.

PHILIP A. HOYNE,
U. S. Commissioner Northern Dist. of Ill.

PETITION OF PROVISIONAL ASSIGNEE TO ADVERTISE FOR BIDS FOR PERSONAL PROPERTY OF BANKRUPTS, FILED JUNE 19TH.

In the District Court of the United States for the Northern District of Illinois.

IN THE MATTER OF
HARRY FOX AND WILLIAM B. HOWARD,
BANKRUPTS. } *In Bankruptcy.*

To the Hon. Henry W. Blodgett, Judge:

The undersigned, provisional assignee, of the estate and effects of Fox and Howard, bankrupts, respectfully represents that since his appointment he has investigated as fully as possible into the affairs of said bankrupts, for the purpose of ascertaining the nature and character of their assets. That the personal assets of said Fox and Howard consist in part of the following, to wit:

Three tug boats, named "Geo. B. McClellan," "Wm. Hewitt," and "L. Everett," respectively.

Four dredges and tools for same, numbered No. 2, No. 3, No. 6 and No. 11—dredge No. 2 is now at Sheboygan, Wis.

Five (5) pile drivers and tools for same, respectively numbered No. 1, No. 2, No. 4, No. 5 and No. 6.

Seven (7) dump scows numbered respectively, No. 8, No. 9, No. 13, No. 15, No. 17 and No. 18—No. 8 and No. 9 are at Sheboygan, Wis.

1 clam shell and tools.

1 derrick.

6 large deck scows.

4 small deck scows.

5 Hulls' deck scows.

3 floats and P. D. scows.
Machinery for old dredge.
A lot of docking material, pine timber, piles, &c.
Two (2) pair of horses and one (1) pair of mules.
Wagons, tools, &c.
Office furniture and fixtures.

Your petitioner further shows that the greater portion of the above described property is chiefly useful to contractors, and during the colder seasons of the year is wholly unserviceable for any purpose ; that to safely keep and protect the same requires the continuous services of two watchmen, and involves a good deal of expense in a variety of ways without any corresponding benefit. That contracts for dredging, pile driving, &c., about which the machinery aforesaid is chiefly used, are usually let at this season of the year or earlier, and that, in the opinion of your petitioner, in order to dispose of the same to advantage, a sale thereof should be made at the earliest moment possible — reasonable notice of such sale and ample opportunity being first given to contractors and others to examine such property.

That the horses and mules cannot be made serviceable in the management of said estate, and are a continual bill of expense.

That the lease of said Fox and Howard of an office at No. —— Dearborn Street has no value over and above the rent contracted to be paid ($1,200), and should be surrendered, and the fixtures and furniture sold without delay.

That inasmuch as said property is situated in different States, and so much of it as is in this city is badly scattered about, and it is impracticable to aggregate it in one place, your petitioner is of the opinion that a sale at public action is not advisable, but on the contrary, he believes the same can be sold to better advantage, after due advertisement, upon sealed bids to be opened in the presence of the court, and subject to the approval of the court.

Your petitioner therefore prays for the entry of an order herein, authorizing him to advertise for sealed bids for said property, either as a whole or in parcels, bids to be opened in the presence of, and to be subject to the approval of, the court.

(Signed) BRADFORD HANCOCK,
Prov. Assignee, etc.

NORTHERN DISTRICT OF ILLINOIS : ss.

Bradford Hancock, being duly sworn, says that he has read the foregoing petition by him subscribed as provisional assignee, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) BRADFORD HANCOCK.

Subscribed and sworn to before me this 19th day of June, 1875.

ORDER OF COURT FOR PROVISIONAL ASSIGNEE TO ADVERTIZE FOR AND RECEIVE SEALED BIDS, ENTERED JUNE 19TH.

In the District Court of the United States for the Northern District of Illinois.

IN THE MATTER OF HARRY FOX AND WILLIAM B. HOWARD, BANKRUPTS. } *In Bankruptcy.*

On reading and filing the petition of Bradford Hancock, provisional assignee of the estate and effects of said bankrupts, praying for leave to sell the personal property and assets belonging to said estate,

It is by the court ordered that the said Bradford Hancock, as such provisional assignee, be and he is hereby authorized and directed to advertise for and receive sealed bids for

the personal property and assets described in said petition (except as herein after stated), either as a whole or in parcels, until the 1st day of July, A. D. 1875, at which time said bids shall be submitted to and opened by the judge of this court, and the said bids accepted or rejected, as this court shall direct. And the said assignee is further directed to publish notice thereof in the *Chicago Times* and *Chicago Tribune* on each intervening Sunday between this date and said 1st day of July, and also daily in the *Chicago Inter-Ocean* and *Evening Journal*, and that he likewise send notice thereof by mail to all known creditors of said bankrupts.

And it is by the court further ordered that the said provisional assignee be authorized to sell the horses and mules described in said petition at public auction, having first given six days notice of such sale in the *Chicago Inter-Ocean* and *Evening Journal*, unless prior to the day appointed for such sale he shall have disposed of the same at private sale.

REPORT OF THE PROVISIONAL ASSIGNEE, RECOMMENDING CERTAIN BIDS FOR PARTS OF PROPERTY AS THE HIGHEST BIDS FILED JULY 2.

In the District Court of the United States for the Northern District of Illinois.

IN THE MATTER OF HENRY FOX AND WILLIAM B. HOWARD, BANKRUPTS. } *In Bankruptcy.*

To the Hon. Henry W. Blodgett, Judge:

The undersigned, provisional assignee of the estate and effects of Fox & Howard, bankrupts, respectfully certifies and reports:

That, pursuant to the order of this court authorizing and directing the same to be published in the *Sunday Times* and *Tribune*, and daily in the *Chicago Inter-Ocean* and *Evening*

Journal for at least ten days, a notice to the effect that he would receive bids up to July 1, 1875, for the personal property and assets of said bankrupts, subject to the approval of this court, a printed copy of which said notice is hereunto annexed and made a part hereof; that he, likewise, mailed to each known creditor of said bankrupts, and to prominent and well-known contractors a copy of said notice.

That, pursuant to such notice, he received bids from various parties for portions of said property, the number of said bids being in all thirteen, only one of which covered the whole, or nearly the whole, of said property. All of the bids so received are reported herewith for inspection by the court, and by the creditors and others interested in said estate.

Your petitioner recommends the acceptance of the following bids, and asks for authority to execute proper bills of sale, and to make and deliver to the said bidders, respectively, upon payment of the amounts of their several bids, to wit:

J. Hodgkins:		
No. 11, dredge and tools complete.....	$10,000	
No. 1, pile-driver, complete.....	1,000	
Nos. 17 and 18, dump scows, each, $900	1,800	
Tug, Everett	1,500	
Oak timber, at $17 per hundred.		
3 oak planks, at $14 per hundred.		
Oak piles, at — per foot.		
		$14,300
Miller & Kimball:		
No. 6, dredge, complete.....	$3,600	
No. 2, pile-driver, complete	1,700	
No. 15, dump scow, complete.....	500	
No. —, derrick scow, either 1, 2, 3, or 4	800	
		$6,000
		$20,300

SUPPLEMENTAL REPORT OF PROVISIONAL ASSIGNEE RECOMMENDING ACCEPTANCE OF BID FOR $40,000 IN NAME OF J. HODGKINS, FILED JULY 2D.

In the District Court of the United States for the Northern District of Illinois.

IN THE MATTER OF
HARRY FOX AND WILLIAM B. HOWARD,
BANKRUPTS. } *In Bankruptcy.*

To the Hon. Henry W. Blodgett, Judge:

The undersigned provisional assignee of Fox & Howard, bankrupts, respectfully certifies and reports —

That since the date of the making of his report herein he has received from J. Hodgkins the annexed bid, proposing to pay for the property therein described the sum of forty thousand dollars in gross.

The bid includes machinery in shop, old machinery in yards, oak timber, planks, piles, etc., and amounts to from $8,000.00 to $10,000.00 more than the aggregate of the highest bids received for the same property in parcels.

Your petitioner believes that the price offered is a fair one under the circumstances, and will net fully as much to the estate as he can hope to realize from the property in any other manner. And he recommends the acceptance of said bid, and prays that he may be authorized to make bill of sale and delivery of the property to the said purchaser upon payment of the amount of said bid.

CHICAGO, July 2d, 1875.

(Signed) BRADFORD HANCOCK,
Prov. Assignee.

CHICAGO, July 2nd, 1875.

BRADFORD HANCOCK, Esq., Provisional Assignee, Room 8, Major Block:

Dear Sir: I hereby propose to pay for the following named property of the estate of Fox & Howard, bankrupts, the sum of forty thousand ($40,000.00) dollars:

No. 11. Dredge and all tools and patterns complete.
No. 2. " " " " "
No. 4. " " " " "
No. 5. " " " " "
No. 6. " " " " "
Dolly Varden No. 1, and all patterns.
" " " 2, " "
No. 8. Dump scow, with the lines, etc., for same.
No. 9. " " " " " "
No. 11. " " " " " "
No. 13. " " " " " "
No. 15. " " " " " "
No. 17. " " " " " "
No. 18. " " " " " "
Deck scows, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.
Floats, Nos. 1, 2 and 3.
Dredge hulls, Nos. 1, 2, 3, 4 and 5.
Tug G. B. McClellan, and all ropes, tools, etc., etc.
" Leonard Everett, " " " "
" Wm. Hewett, " " " "
1 clam shell dredge and tools.
1 steam derrick and tools and all patterns.
Spades, dipper handles, cranes, etc., and stuff belonging to dredge and pile driver machinery.

(This bid does not include machinery in shop belonging to shop, or timber, plank, and piles on south branch yard or office fixtures.)

Respectfully submitted,

J. HODGKINS.

BID OF ALBERT CONRO FOR PART OF PROPERTY.

CHICAGO, June 29, 1875.

Tug Geo. B. McClellan	$3,000
Dredge No. 11	4,500
Dredge No 3	2,500
Dump Scows Nos. 13, 15, 17 and 18 and three flats	2,000
No. 1 Pile Driver, with boat	800
No. 4 Pile Driver, with scow	500
	$13,300

Together with all tools, lines, blocks, and fixtures, belonging to each of them.

To BRADFORD HANCOCK, PROVISIONAL ASSIGNEE, } *Estate of Fox and Howard.*

I will give for the above property Thirteen Thousand Three Hundred dollars cash, if sold and delivered within ten days from this date.

(Signed.) ALBERT CONRO.

ORDER OF JULY 2D FOR PROVISIONAL ASSIGNEE TO NOTIFY CREDITORS TO SHOW CAUSE, AND FOR ALL PERSONS INTERESTED TO SHOW CAUSE BY JULY 9TH WHY BID SHOULD NOT BE ACCEPTED.

In the District Court of the United States for the Northern District of Illinois.

FRIDAY, July 2, A. D. 1875.

Present the Hon. Henry W. Blodgett, Judge:

IN THE MATTER OF HARRY FOX AND WILLIAM B. HOWARD, BANKRUPTS. } *In Bankruptcy.*

Upon reading and filing the report of Bradford Hancock, provisional assignee of the estate and effects of said bank-

rupts, it is ordered that all persons interested in the estate of said bankrupts show cause on or before the 9th inst., why the bid of J. Hodgkins of $40,000 for the property of the bankrupts should not be accepted.

And, it is further ordered that said provisional assignee give notice of this rule by mail to all known creditors of said bankrupts, and by publication of a notice thereof in the *Chicago Daily Inter-Ocean* and *Chicago Daily Evening Journal*, newspapers printed and published in the City of Chicago, in said District.

REPORT OF PROVISIONAL ASSIGNEE THAT HE SEND SUCH NOTICES TO CREDITORS UNDER ORDER OF JULY 2D, AND RECOMMENDING THAT THE HODGKINS BID BE CONFIRMED.

In U. S. District Court, Northern District of Illinois.

IN THE MATTER OF HARRY FOX AND WILLIAM B. HOWARD, BANKRUPTS. } *In Bankruptcy.*

To the Hon. Henry W. Blodgett, Judge:

The undersigned provisional assignee of said bankrupts, respectfully certifies and reports:

That pursuant to the order of this court, entered on the 2d day of July inst., in this matter requiring and directing the same, he has caused to be published daily in the Chicago *Inter-Ocean* and *Evening Journal*, the said order of court, proof of which publication are hereto annexed and made a part of this report.

And he further certifies and reports that on the 3d day of July, 1875, he mailed to each of the creditors of said bankrupts, a printed copy of such order.

And he further says, that the time fixed by said order has elapsed, and no objections have been filed to his report of

sale made and filed herein on the 2d day of July inst., nor to the confirmation thereof, except by one Stephens, who claims to own an interest in a part of said property, and that J. Hodgkins, the highest and best bidder for the property mentioned in such report, now stands ready to pay over the purchase-money for the same.

Wherefore, he prays that his said report of sale, the said sale be approved and confirmed; and that he be authorized to execute and deliver to J. Hodgkins, the said purchaser, proper bills of sale, and the property covered by said bid, upon the receipt of the sum of forty thousand dollars, bid therefor.

(Signed) BRADFORD HANCOCK,
Prov. Assignee.

CHICAGO, July 9, 1875.

To the above petition are annexed the certificates of publication by the publishers of the *Chicago Inter-Ocean* and *Evening Journal*, referred to in the foregoing petition.

ORDER OF JULY 9TH, CONFIRMING SALE ON THE HODGKINS BID.

In the District Court of the United States for the Northern District of Illinois.

IN THE MATTER OF HARRY FOX AND WILLIAM B. HOWARD, BANKRUPTS. } *In Bankruptcy.*

Upon reading and filing the report of sale of Bradford Hancock, Provisional Assignee, in the above entitled matter, and his report this day presented and filed, showing due proof of publication and mailing of notices of the entry of an order to show cause made herein on the 2d instant, and after hearing objections to the confirmation of said report of sale, and the court having duly considered the objections filed by Stephen C. Walker to said sale, doth overrule the same. It is by the court ordered that the sale of the property to J.

Hodgkins, for the sum of forty thousand dollars, mentioned in his bid therefor, and the said report of the said provisional assignee thereupon, be, and the same are hereby, in all respects, approved, ratified and confirmed, and the said provisional assignee, upon the receipt by him of the sum of forty thousand dollars, is hereby authorized and directed to execute and deliver to the said J. Hodgkins, all bills of sales, or other transfers, necessary to pass to and vest in the said J. Hodgkins, his heirs or assigns, all the right, title and interest of said Fox & Howard, in and to said property, and to deliver to the said Hodgkins the immediate possession thereof. It is further ordered, that said provisional assignee pay over to the clerk of this court the sum so received for said property, and that said clerk deposit the same in the registry of this court, and that said proceeds be held subject to all liens and claims of parties claiming any lien or interest in said property, or any part thereof.

PETITION OF ASSIGNEE OF JULY 12TH TO SET ASIDE FORMER SALE, AND MAKE NEW SALE TO CONRO AND CARKIN, WITH THE BID OF LATTER.

UNITED STATES DISTRICT COURT,
NOTHERN DISTRICT OF ILLINOIS. } ss.

IN THE MATTER OF HARRY FOX AND W. B. HOWARD, BANKRUPTS. } *In Bankruptcy.*

TO HON. H. W. BLODGETT: Bradford Hancock, provisional assignee of said bankrupts, respectfully shows unto your honor that on the 9th day of July instant, an order was entered herein confirming the sale of certain property of said bankrupts therein enumerated to one J. Hodgkins, for the sum of forty thousand dollars. That petitioner has since said order was entered repeatedly called upon said Hodgkins to pay over to petitioner said purchase money, and that on the 10th

[The following list was left to be inserted when the order was prepared.]

No. 11. Dredge and all tools and patterns complete.
" 3 " " " " "
" 6 " " " " "
" 2 " " " " "
No. 1. Pile Driver, Scow, and Leaders, &c.
" 2. " " "
" 4 " " "
" 5 " " "
" 6 " " "
Dolly Varden No. 12, all patterns.
" " No. 2, " "
No. 8 Dump Scow, with the lines, &c., for same.
" 9 " " " "
" 11 " " " "
" 13 " " " "
" 15 " " " "
" 17 " " " "
" 18 " " " "

Derrick Scows, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10; Floats, Nos. 1, 2 and 3; Dredge Hulls, Nos. 1, 2, 3, 4 and 5; Tugs G. B. McClellan, Leonard Everett, Wm. Hewett, and all ropes, tools, &c., &c. Old machinery, and stuff at yard, North Branch: 1 Clam scow dredge and tools; 1 Steam derrick, dredge and tools, and all patterns, duplicate machinery, spuds, dippers, hand car, cranes, &c., and stuff belonging to dredge and pile drivers machinery. (This bid does not include *machinery* in *the shop* belonging to shop. 1 n timber, plank and pile in S. Branch yard, or office fixtures,)" Be and the same is hereby sold to the said Conro & Carkin for the sum of $40,500, the purchasers assuming the claim of Anson Fox *v.* the Tug Hewett, and assuming and agreeing to pay all custodian charges on said property at South Chicago and Sheboygan. And it is further ordered that in the payment of the said sum of $40,500 to him the provisional assignee delivers said property with proper bills of sale thereof.

EVIDENCE TAKEN

ON BEHALF OF PETITIONERS.

DEPOSITION OF CHAS. S. CRANE,

SEPTEMBER 21, 1875.

Charles S. Crane, of the city of Chicago, county of Cook, and State of Illinois, being first duly sworn, cautioned, and examined at the time and place aforesaid, on his oath says:

Examination by John S. Cooper, Esq., on the behalf of the Petitioners.

Name, Charles S. Crane; age, 43 years; residence, 219 W. Washington street; am importing, and connected with some stock companies; do some dredging; lived in Chicago 20 years; connected with Crane Bros. 20 years; it has not been Crane Bros. 20 years; first R. E. Crane & Bros., then Northwestern Manufacturing Company, and now Crane Bros. Manufacturing Company; was interested in dredging busines prior to 1st July; in one dredge, known as White Dredge and scows; about that time determined to take interest in estate of Fox & Howard, as we had not machinery enough to do first-class business, and by buying that we could do any kind of work, and I thought it cheap at that price. Hodgkins had charge of running part of dredge, and looking after general business, getting work, &c.; can fix exact time when I determined to take interest—about time bids were advertised; told Hodgkins to bid on such property as we should want; didn't fix amount of the first bid;

afterwards, the next day, Hodgkins came to me and told me what he thought, and what talk he had had with Hancock, and I told him to put in bid of $40,000 for property; think I saw him that same day; saw him every day. (Document handed to witness.) Remember seeing this before; don't remember whether it was shown me that evening, or not; very soon afterwards—not sure as to time. It is a bid including some 40 pieces of machinery; I remember counting and figuring them up; it was either the day I put them up, or the next day, I think; told him it was all right—I approved of it; never thought about whose name bid should be in; told him to go and bid on it. From 6th to 12th July I made no secret of fact that I had authorized bid; friends all understood it—those I had talked with; had no expectation of paying the $40,000 on bid upon formation of a company If bid was awarded to me, intended to pay myself; didn't know any one in the case at that time, except Hodgkins; didn't expect he had anything; at that time; don't remember of talking with Miller & Kimball; didn't take them into consideration about bidding for property; in ordinary times I could raise $40,000 on two hours notice; think I could, also, during this period, from 2d to 12th July; don't know anything to the contrary; had no difficulty in raising $40,000 that was paid into court; after bid, two or three days, I think, saw Fox at my stable; don't know how he came there; didn't introduce himself; Martin Ryerson introduced him; can't give exact language he used; think uncle; Mr. Ryerson introduced subject, saying, "Here Harry Fox tells me you are bidding on his property, and he wants it;"—words to that effect—that he had friends who would help him to buy part, if I would give him a chance; said I had no objections, if he would buy part, or all, and take me out—if he would clean me out, my small dredging business and all contracts, &c., I would let him have the property; that is, I wanted to go into business more than I was, or go out altogether. He said he had friends to help him buy part, and he thought it could be pieced up—that Harry Fox wasn't dead yet, and had some friends left. Never saw Fox, to know him, before. Mr. Ryerson spoke favorably of him—that he had known him several years, and wouldn't

like to see him crushed out entirely, or something of that kind. Only on Ryerson's recommendation that I entertained him at all. Met Conro & Carkin, with Fox, at Skinner's hotel; got a note from Fox, wishing me to go over there and have an interview with them; think this was a day or two after interview with Fox; it was before the 9th and after 2d July; went to Skinner's hotel and met them; don't know that the fact that I was the bidder, and the one responsible for bid was spoken of, but it was understood that bid should remain mine until we got finally settled up; it was agreed that it should stand my bid.

They didn't talk of raising bid; one of them remarked it was too high then. Think Conro said it was more money than he would give for it. I said nothing to induce them not to put in bid; interview was at Fox's solicitation; he sent note and I met them there. That was the only time I saw Conro; think I met Carkin next day at my office; I didn't send for him; he came of his own motion, as far as I know; he came with Fox and talked about this property. My impression is, this was Saturday after property was awarded. At interview at Skinner's, Conro said he would furnish some money for Fox — didn't want property himself — that he had all dredging property he wanted; gave me to understand it was a matter of helping Harry Fox by Conro & Carkin. Didn't know relation of Conro & Carkin to Fox at that time. Don't recollect much about conversation on 10th, except about getting hold of property and delivering it. Think at his suggestion I sent Hodgkins to tell Hancock bid was all right, and I was ready to pay when he was ready to deliver. They thought they would go to Chicago and Calumet with Hancock and look at property.

Q. I meant to ask you Mr. Crane whether, in your interview with Mr. Carkin and Harry Fox and the interview with Conro, they knew that this bid of forty thousand dollars, put in for this property in the name of J. Hodgkins, was your bid?

Objected to.

That is what I understood, or they would not talk to me. I had no other business with them. Knew bid had been confirmed some time in afternoon of July 9th ; Hodgkins told me on the corner of LaSalle and Washington street, I think. Hodgkins repeated conversation (in his examination) between himself, Carkin and me on the 10th, as I understand it. My impression is, Fox was there, but am not sure. Saw Fox on 9th, driving past, towards evening ; think he stopped and congratulated me on getting property. I was sitting in front door of my office ; he drove along in front ; had no further talk with him on that day ; met him Saturday at his office, about 3 in afternoon. I wanted to see what kind of a deal they were making with Fox, and told him my idea of fixing the thing up ; told him I thought we could make a strong company by taking in Miller, Kimball, Hodgkins, himself and myself— that we could make money out of it, and I came to talk over subject and send Miller and Hodgkins to Milwaukee to see if Conro would help him to the amount of a one-fourth share. Told him how it was to be managed ; Miller to be engineer and general superintendent, Hodgkins to run machinery and Fox to look after general contracting, I to have general supervision over all. I proposed to put them on a bare living salary, and if there were any dividends we could take them out. The general superintendent was James Miller, his former employee. Fox was terribly opposed to arrangement ; said he was going to boss dredging business or have nothing to do with it ; was opposed to Millers going in. Told him if I had anything to do with it he would not be boss ; he wanted to know why ; I said his experience had not shown him not to be capable. We passed out from interview rather rather friendly, nothing definite was fixed upon. Told him I would send men to Milwaukee any way. Nothing definite arranged as to whether he would go in with us or not ; didn't say he would not go into such a thing ; don't think he objected to small salaries ; objected to Miller more than any one else. Think I said nothing about bid being awarded me in that

interview. First saw Hancock about sale of property on Saturday, about 5 or 6 o'clock, after I had conversation with Fox at his office; my brother, Geo. Hancock and myself were present. Hancock asked if Crane was in; introduced himself as assignee of estate of Fox & Howard; said he understood I was backing Hodgkins' bid, and he called to find out. Told him I was. In reply he said property was scattered, and he wished to commence turning it over, as it was a good deal of trouble to take care of it, &c., and he wanted an advance. Told him, "very well." Says I, "It is too late to commence to-night to turn it over." Told him I would give him some money Monday morning on it and balance as property was turned over. Said he wasn't particular about amount; he said, "I know you, Mr. Crane, by reputation, and anything you say will be all right." He said nothing about having demanded money of Hodgkins, and being unable to get it on bid. His office was mentioned as place of payment; didn't say at what time Monday morning; didn't say he had been informed that I was to pay part of money on Hodgkins' bid. I left office with him. I think I asked him to go up as far as Skinner's hotel; I walked up there with him; think nothing further was said about payment on Monday morning. Talk on street was about helping Harry Fox—a general talk about helping Fox. Think I told him I had sent Miller and Hodgkins to Milwaukee to see Conro.

Never told him the payment of $40,000 on Monday morning depended on forming company, nor upon anybody else's putting in money. Was at Skinner's hotel probably five minutes; said "good night" as we parted; we parted as though all was satisfactory. Next saw him Monday morning at ten minutes eleven; he did not tell me in Saturday interview that there were "wiggles in the water," or anything of that kind, or that anyone else was interested. It was ten minutes past eleven when I went in office; had with me certified checks for $20,000, one from First National Bank, and Cashier's check from Corn Exchange Bank; got them to purchase property; could have paid rest that day. Miller

and I went in together to office; Hancock, Hodgkins, and two other gentlemen were there, one of them talking to Hancock, and the other grinning at the performance. Went to Hancock, told him I came to make some payment on dredge property, and presented two checks for $10,000 each. He didn't take them then, said, "You are too late, the property is sold and paid for in the court." It took me down; told him I guessed it was wrong. I said, "Didn't we have an agreement on Saturday night, I was to be here this morning to pay that money?" He said, morning was gone. I said, "Ain't it morning until noon?" and pulled out my watch. Says he, "You are too late." Told him I thought it was a swindle, and asked if there was no redress. He said, "No," and I left.

Didn't say he sold because he couldn't get money. I left and went up to Judge Blodgett's room and objected to the court. Went down and met Harry Fox, and we went round the corner a few minutes, and then I went home, I think. Said to Fox, "You are playing a pretty smart dodge." He says, "Come along, we'll make you all right any way." Told him I didn't do that kind of business. We went round the corner, and I went home. Didn't go to Crane & Tatham's office before dinner; didn't see Tatham; went to Crane & Tatham's office after dinner; Miller, and I think Hodgkins, both went with me in to see Judge Blodgett. This was immediately after leaving assignee's office. Went up again with Tatham in afternoon; Tatham is Crane's partner as attorney at law.

Requested Miller and Hodgkins to go to Milwaukee sometime Saturday; told them of arrangement that is to take Fox in, if they would furnish money for one-fourth interest. We discussed the thing, and thought we would see if Conro would furnish money for him. Didn't expect them to bring back any money. Interview with Conro was that same week; my recollection is, it was Wednesday, July 7. Had not heard directly from Conro in the *interim*. Went

to see Judge Blodgett the second time, to see if I could not get some relief. Wanted to get assignee before him; stopped and asked him to go up and tell the truth to Judge Blodgett. Said he wouldn't go unless sent for. Don't know of my own knowledge how Conro, Carkin, and Fox knew Hodgkins' bid was mine. At interview at Skinner's, bid was to remain mine. Conro expressed himself distinctly that he wanted nothing to do with the property. It was a matter of helping Fox. Conro made that statement. Don't know why Hodgkins was not invited there. Can only imagine. Don't know whether he was or not.

Cross-Examination, by Mr. Stiles, on behalf of Conro & Carkin.

No conclusion reached at Skinner's hotel, only that property should remain as it was. Said there, if they would take my dredge and take my contracts, I didn't care to go in; but I would go in any shape that they would fix it; didn't urge anything upon them; wasn't particular one way or the other, never went to see them on any business of that kind. Did not make that proposition to any particular one of them. Think Conro responded: "Crane is all right in the matter; I guess we can fix this this thing up. Let the thing stand until the thing is settled — that is, let the bid stand as it is and we would make the thing up afterwards." That was the conclusion we reached; that was the way we parted. My offer was to relinquish interest in bid if they would take dredge off my hands and pay me the cash, and assume the contracts. They did not assent, didn't reach any conclusion; didn't say whether they would take anything or furnish any money. Told them I wanted $12,000 for dredge; told them I would take part cash and rest in notes at ten per cent.; told them generally what contracts I had; the proposition wasn't detailed so they would know just exactly how it was. They asked me about certain work and price per day, and I told them. Think Fox said, "Haven't you got anything for a less price?" and I told them, No.

Had an interview with Fox on Saturday that Miller and Hodgkins went to Milwaukee. My proposition then, was a combination of Miller & Kimball, Hodgkins, Fox, and myself; Miller to have charge of office business and engineering business; Fox outside superintendent of work, for procurance of contracts; Hodgkins in charge of dredge; and myself general manager of entire business. That is the way I understood it, and Fox used terribly rough language, and declined to go into any such arrangement.

Did not regard that decision of Fox as final, but that after he saw Conro and what he would think of proposition, he would conclude it was the best thing for him to do, looking at it from my standpoint. Had known Fox only a few days; never consented afterwards to go into that arrangement; don't remember that he said he had enough of partnership and didn't want any more of them; think this was between three and four in the afternoon. Yes, Miller and Hodgkins went to Milwaukee at my direction; told them to see Conro and talk over the arrangement; that we thought best for all concerned, and see if he would agree to it. The arrangement was to go into this company; didn't tell them what to do in case Conro assented; didn't give them authority to consummate any arrangement, but simply to talk with Conro and get his idea; didn't authorize them to convey the impression that such an arrangement could be made with Fox; I was acting in my own interest in sending Miller and Hodgkins to Milwaukee; didn't expect Conro to take an interest, but Harry Fox; Fox had told me he would not, in very bad language, but thought he would if Conro said so; he was furnishing money and I thought would control; I was influenced solely by my interest in Fox; was interested in him from the way he was introduced to me and his friends wishing to help him along, nothing else; my object was benevolent, as far as he was concerned and as far as I was concerned. Am not sure Hodgkins and Miller were together when I made up my mind to send them to Milwaukee, or whether I met them separately; made arrangements to meet them at boat and talk matter over. After their

return they thought Conro would agree to this, but it was not finally settled; I saw them Monday morning; saw Hodgkins probably at 8 o'clock, Miller at 9 or a little after; I then proceeded to get some money and make this payment after I saw Miller; I had concluded to make payment on Saturday; I was to make it Monday; I was to get around to the bank as soon as convenient; was detained ten or fifteen minutes; did not have an interview with Fox before I tendered money; after I came from Judge Blodgett's room the second time I met Fox on the street—that was the next interview; had no further conversation with Fox as to the proposed company. At interview at Skinner's don't think subject of my being real bidder was brought up in that shape. It was talked of in the shape that they came to see what kind of a trade they could make with me for the property; subject of my being real bidder was not discussed. Only time I ever saw Conro was at Skinner's; my dredge, up to that time, had been doing very well; I was not particular about disposing of it, if I could get other property cheap with it I was willing to keep it—was willing to let them have it for cash. No inducements operated upon me in favor of Fox, except statements of friends and general understanding that he was acquainted with business. He understood city business; didn't think he was good enough for all the work; think his past experience didn't show it. To make so bad a failure as he had made, I don't regard him as a good business man, who, at the age of 50 years, finds himself unable to meet his pecuniary obligations. It looks to me that success is the only criterion of ability in this life and this world—that is the way it looks to me. One of the objections Fox made to this arrangement was that it included Miller, his former employee for many years, and such an arrangement would not be agreeable to him.

Cross-Examination, by Mr. Tenney, on Behalf of the Assignee.

At time first bid was put in Hodgkins was working for me; he was to have one-half profits of running dredge and

scows; he run the dredging business; told him to put in bid for such property as we ought to have and knew it was in, too; that was before he actually put it in; didn't tell him whether to put in his, my, or the firm name. Didn't regard Hodgkins as having authority to make that bid without express direction; didn't know whose name bid was in until it was awarded, or rather until I saw a copy of bid; after putting in bid, didn't know of his changing or withdrawing it; told him to put in the forty thousand dollars bid; didn't know then he had withdrawn the former bid; knew there had been another bid before, but nothing was said about withdrawing one bid and putting in another; he talked of a sweeping bid to carry off all, and I told him to put in forty thousand dollars bid; didn't know whose name bid was in; didn't tell him to put it in in my name; I said I didn't know bid was in Hodgkins' name until I saw copy of bid; this was not on 10th July, but a day or two after bid was put in, probably the same day; think it was the same day.

Don't know anything of Hodgkins declining to take property in favor of Hale & Ayer; don't know any reason why he declined to adhere to the first bid; he didn't tell me anything about it. When I found bid was in his name, I said all right, and to tell Hancock we were ready to take property as soon as he was ready to deliver it. Nothing was said about bidding in his own name; didn't make any objection when I discovered it; told him to say we would take it when delivered. Made no remonstrance when bid was discovered to be in his name instead of mine.

First saw Hancock Saturday evening, July 10th; first saw order confirming sale on Friday eve., about 5 or 6 P. M.; think Woodbury handed it to me. Know it was Friday, because it was day of sale, and I gave Woodbury instructions right away about it, and Woodbury was not there next day. Remember distinctly Woodbury gave me order. Think at that time I had a man in my employ of the name of Kay or Key; he has left since; can't tell his full name;

don't know where he is now; he was not at office often; his business was in street and around city. Don't know that he was a man of family; don't know whether he is a bachelor; think he is boarding around in different places; don't know of any one but Woodbury who would know where to find him. This interview with Hancock lasted probably ten or fifteen minutes. He remarked that he understood I was the backer of Hodgkin's contract, and wanted to know if it was so. I told him it was so. Said something of paying money; said nothing of trying in vain to get it of Hodgkins. Said he wanted to turn over property as soon as he could, for one thing; didn't understand he was to turn over property before he got money. He wanted some money before he began turning over. I asked him what amount; he said he was not particular, only something on deposit to show good faith. I told him he should have it. Told him bid had been made in good faith, and he understood it so without question. Think he asked if it was a *bona fide* transaction, and I said it was. Didn't say anything about having been delayed too long. Nothing was said about making deposit *early* Monday morning, but simply Monday morning, not *early* or *first thing* Monday morning; gave my reason for not paying then; told him I had not that much about me, and he probably wouldn't take my check, but I would give him money Monday morning on it.

Did'nt say at my office anything about Miller and Hodgkins having gone to Milwaukee. Did'nt say at my office anything about a projected company being formed.

Walked away from the office with him. There was some talk in the street going to Skinner's hotel. Told him I had sent Miller and Hodgkins to Milwaukee to see Conro in the interest of Fox; that we were trying to get up a company. Not a word about each one putting in his proportion. Gave him to understand I was to pay $40,000 bid without regard to company. Told him I would give him some money Monday—the balance as fast as he could de-

liver machinery. No company business or anything else talked of in office. We settled our business before leaving office. No talk on street about any body furnishing part of money.

On next morning think Hodgkins took the order of confirmation; don't know how long I had it; have not got it; don't know whether it is there; think Hodgkins took it from me; not delivered back to Hancock by me.

On Monday morning after sale to Conro & Carkin, I asked Hancock to go to Judge Blodgett's room with me. Said he would go if the Judge sent for him. May have put it, that the Judge would send for him if he wanted him; the idea was he had no reason to go unless he was sent for. Don't remember that he said he would wait in his office, and if Judge wanted him, he would go; he may have said so.

Told Judge Blodgett, told him I had come to make payment in Fox & Howard matter; told him in substance of contract on Saturday, and that I was told I was too late. I said it was all wrong, and wished him to stay proceedings until he got all the facts in the case. Judge said I was too late—frequent demands had been made for payment, and it had been refused, and he wanted to close it up. He was sorry, but it could not be helped. Told the Judge he had been deceived, and assignee had done wrong. Judge remarked that he came in soon after 9 o'clock for an order of sale to other parties, and then he refused to give it to him, and then he came again at a few minutes of 11; told story again, and he gave him the order.

The first interview was very short. The next time Mr. Tatham introduced the subject; told him I had come to see if I could get my rights before him. Appealed to him that I had been swindled; that I had just seen the assignee, and asked him to come up and tell the truth; and that if he wished him to come he could send for him. Said he

didn't want the assignee. Didn't want to hear anything more about the case; that it was disposed of, and he wasn't going to take it up, etc. That is about what took place there. Before sale to Conro & Carkin I had not communicated with Hancock except through Hodgkins. Made arrangement in regard to having talk concerning a joint operation, and Miller, Kimball and Hodgkins to take an interest, on Saturday. Had talked matter over before, but never came to any understanding at all. No talk with Kimball and Miller before $40,000 bid about my co-partnership business. No talk with Hodgkins that he was to have any interest, at that time, I was to have it. Think Kimball & Miller did not see me before $40,000 was put in, about getting in under my bid, and having put in a bid and not getting it. Don't know how they came to withdraw their bid.

MR COOPER. Is it claimed that they withdrew their bid?

MR. TENNEY. Yes, that is to say, that the basis of bidding was changed and they declined to bid on the new basis, because the arrangement was made to come in under his bid.

MR. COOPER. *Not by any manner of means.* Didn't know at time I put in $40,000 bid that Miller & Kimball were bidding for part of property; didn't know Miller & Kimball at that time; don't think one came to see me before; don't know how he testified; don't think I ever saw him up to that time; didn't know they drew up bid and signed Hodgkins' name, until about the time I demanded property; guess that was the first time I knew of it. First conversation about Miller, Kimball or Hodgkins taking an interest was between seventh and ninth, but nothing definite arrived at; all in favor of helping Fox, after he was introduced to me, and rediscussed what kind of a deal we should make. Miller & Kimball & Hodgkins were anxious to help him; I never knew Fox until Ryerson introduced me, and he then told a pitiful story—didn't want to be wiped out clean, thought he had some

friends that would help him, etc. After he left Ryerson and I talked the matter over, Ryerson felt friendly towards him and didn't want to see Harry squashed altogether, and says "do what you can for him." I concluded to do it, and then in a general way talked it over with Miller, Hodgkins and all hands, that he would be of some assistance to us. Wouldn't take Mr. Fox to be an extra good-looking man; his manners and appearance are rather rough. Mr. Hodgkins told me about change in $40,000 bid—about striking out two items in the bid; I think it was mentioned when I looked over the bid; I think Hodgkins pointed them out.

Re-Direct Examination, by John S. Cooper, Esq., on behalf of Petititioners.

It is true that subsequently to interview on corner of LaSalle and Madison, on the 12th of July; I had no further interview; an interview has been sought by him; I got a note from him. I produced the note and attached it to my deposition, (note attached to deposition and marked "Exhibit 1.") Think I replied and said I had no business with him, and if they had with me to call at my office. Since July 12th, after the interview with Fox, I have not had any negotiation with Conro, Carkin, Fox or Howard, or either of them, or authorized any one for me to make any. Mr. Ryerson is my uncle and a very warm friend of mine; he originally started us in business here, and was willing to help anybody who was a friend of his. When I said I didn't consider a man who failed in business a good business man, I considerad Fox & Howard in the same light. Knew at the time I told Fox I couldn't consider him a success, the extent of the failure; understood they had made a bad failure; a small amount of means—a large amount of indebtedness—looked like a big operation; knew nothing of Fox's business ability except that he had failed. I didn't say Fox objected to going in with Miller on the ground that he was an old employee; the principal objection was he was a Presbyterian. There were offensive and opprobrious epithets attached to Presbyte-

rians several times. Don't think he made any objection to Kimball; I think he included the firm of Miller & Kimball, but no objection to Kimball,—nothing on account of his integrity or want of capacity; I asked him what wasn't right about him; he said it was on account of the Presbyterian; told him a good Presbyterian was good enough for me. Before leaving office Saturday night Mr. Hancock and I had satisfactorily settled on paying money on bid Monday, and turning over property; talk on street had nothing to do with that; a mere casual talk about assisting Harry Fox; it had no relation to taking property from assignee and paying for it; it simply referred to what we would do with property when we got it. When $40,000 bid was paid I got money, as soon as I could walk down to bank and present a check.

Mr. Cooper. The petitioners now close the testimony on their part, excepting as to any other witness whom they may desire subsequently to call, either as a part of their direct testimony, or as a rebuttal; but so far as they now know, either petitioners or counsel, their testimony is closed on the direct.

Whereupon the taking of further testimony in the above entitled matter, was adjourned until 10 o'clock A. M., Thursday, September 23d, 1875.

DEPOSITION OF GEORGE W. CRANE.

September 21, 1875.

Examined by Edward Crane, Esq., on Behalf of the Petitioners.

I reside at 18 Throop street; I came to Chicago first in the fall of 1860; I have been away two years during that time; I was employed in my brother's office and store; prior to the 15th day of July I was in the store all day; on Saturday, July 10, Mr. Woodbury, the book-keeper, was away, and

my brother and I ran the store together; he was called out frequently; I have seen Mr. Hancock before; I have no personal acquaintance with him; I first saw him at the store, 37 South Canal, at the corner of Washington and Canal; that is the office of Charles S. Crane and his general headquarters—his business office; it was in the neighborhood of five o'clock that I saw Mr. Hancock there at the office; I could not say to the minute; I presume it was a little after; it was later than half-past four; Mr. Hancock came to the office alone—into the office; he might have left some party outside; came into the office alone; I saw him when he entered the office; my brother Charles and myself were present; when Mr. Hancock came into the office he approached my brother and says, "This is Mr. Crane, I presume?" and he says, "Yes, that is my name;" "My name is Hancock, assignee for the estate of Fox & Howard; I came to inquire if that was a *bona fide* bid, or if you are at the back of Mr. Hodgkins' bid?" "If it was a *bona fide* bid?" I heard Mr. Crane answer to that distinctly, he said, "Yes, certainly it was a *bona fide* bid; he calculated to carry it out in good faith." The assignee replied that he knew him, knew him from reputation, and he had come merely to see if it was a *bona fide* thing, and to secure the thing; that there was a good deal of loose property around which might be carried off, and that he wanted to have some security. Mr. Crane asked him how much he wanted, or if he wanted the whole thing down, and he said, "No," he wanted sufficient to secure this loose property—to relieve his responsibility for this loose property, something to that effect. Mr. Crane said, in reply to that, "Very well," he was willing to do that, but it was after bank hours and late in the evening, but he would attend to it Monday, Monday morning. The assignee replied to that, that would do; said he was satisfied with that. I do not think that the assignee was there fifteen minutes, in the office; I do not think he was there over fifteen minutes. That is, in fact, all the conversation I heard between Mr. Hancock and Mr. Crane; that is the conversation, yes, sir. He came, it seemed to me, to secure this sale and be satisfied it would be attended to Monday morning; he went away apparently satisfied with

the answer he received from Mr. Crane. I do not recollect of hearing the assignee say anything about his being informed that Mr. Crane was going to furnish this money; I am almost confident there was nothing said in the conversation in respect to the formation of a company; nothing said about a company; his wish seemed to be to secure this bid and to ascertain whether it was Mr. Hodgkins' or Mr. Crane's bid, or if Mr. Crane was at the back of Mr. Hodgkins' bid; I heard no conversation about a company; I think I heard all the conversation that occurred there; I sat as close as from here to my brother, C. S. Crane—not over five feet. In the afternoon of Friday, July 9, the day before the interview between Mr. Crane and the assignee, I was around and in the office and store, out and in; that Saturday afternoon, the time of this conversation, was the first time I had ever taken any notice of the assignee. I think Mr. Hodgkins came into the office to Mr. Crane on the afternoon of Friday; I could not say whether there was anybody with him or not; I am not clear on that at all; I have no recollection of seeing the assignee before Saturday; I never took notice of him before that time; the way I came to take notice of Mr. Hancock's presence on the afternoon of Saturday, July 10, during this conversation, it was late in the afternoon, and being Saturday business leaves the street early, and it was very quiet there; sat around and waited; but we make a point to keep open until six o'clock to do any business, if there is anything; but still there is very little business after five, and still we were staying there for six o'clock to come, and we were sitting there with our hands in our laps, and he came in rather suddenly, with a kind of short, quick movement, and kind of woke us up; then I looked up and saw the man, and I think he spoke quite prompt, and it attracted my attention. The assignee left the office in company with my brother; they went out of the office together, south on Canal street towards Madison street; the last I saw of them they were together; this might have been in the neighborhood of half-past five o'clock—it was not six.

Q. Well, now, from your knowledge of what occurred

there that afternoon, Mr. Crane, from the conversation that you heard, was it a fact that any positive arrangement for the payment of this money was made between the assignee?

By Mr. Tenny. Ask what was said and done.

A. Well, it was positive as far as a man's word is concerned, to that extent; a man's business connection and general character.

By Mr. Cooper. That he did agree to close the matter by Monday?

A. Yes, sir, there was to be an advance, inasmuch as the property could not be turned over immediately, there was to be an advance made; enough to secure it anyway, or as fast as the property could be turned over.

Q. Well, did Mr. Crane tell the assignee that he would make that payment?

A. Yes, sir; he said he would see him and make a deposit, or pay him a part of the money on Monday.

Q. Whether any condition annexed to that; did he refer to anybody else paying it?

A. No, sir; it was individual, personal.

Q. Did the assignee express any dissatisfaction in your presence?

A. Not at all.

Q. Did he express any satisfaction, or say he was satisfied?

A. Yes, sir; he said that would do.

Q. Said that would do?

A. Yes, sir.

Cross-Examination, by Mr. Tenny, on behalf of the Assignee.

Q. Was anything said in that conversation about Mr. Hodgkins and Mr. Miller having gone to Milwaukee?

A. No, sir; nothing of that kind said at that time.

Q. Are you positive that nothing was talked about that?

A. I think I am; there was nothing said of that kind at that time.

Q. Well, that is all.

DEPOSITION OF JEFFERSON HODGKINS,

SEPTEMBER 17TH, 1875.

Jefferson Hodgkins, of the city of Chicago, county of Cook, and State of Illinois, being first duly sworn, cautioned and examined, in the above entitled matter, at the time and place before mentioned, on his oath says:

Examined by Edward Crane, Esq., on behalf of Petitioner.

BY MR. TENNEY. In the examination of these other witnesses, I want them examined out of each others presence.

BY MR. COOPER. I think it is proper and right that they should remain here. The petitioners are my clients, and it is necessary to consult with them.

BY THE REGISTER. I don't think the court would exclude the petitioners. I think that probably the court would exclude the others.

BY MR. COOPER. I ask that Mr. Fox be excluded, I understand that he is present.

(Mr. Fox leaves the room.)

By the Register. I don't think the court will exclude him, but he can go if he wants to.

Am superintendent of dredging and contracting for Mr. Crane; have lived four years in Chicago; have been interested more or less in the dredging business every season since I have been here; was superintending dredging and contracting for Mr. Crane in June, prior to July, 1875. Am acquainted with — have met Bradford Hancock; met him on or about the first day of July, or a day or two prior to that. Have met Harry Fox since that time; think I met him in June for the first time. Met Bradford Hancock for the first time on or about July 1st; had business with him at the time; went in company with Mr. Miller and Mr. Kimball to see him in reference to this dredging property that was to be sold — the dredging property of Fox & Howard; Mr. Miller told me of this sale for first time in Crane's office; had heard from papers before that Mr. Hancock was provisional assignee. On afternoon of first of July, think it was, talked with Hancock in regard to this property; he asked that I put in a sweeping bid for the whole property — property included in bid made after that — for the sum of forty thousand dollars; he said if I would make such a bid he would recommend it to the court, and he thought it would be accepted, or words to that effect; told him I would have to see Crane first. Prior to that I talked with Hancock in regard to my working for Crane, being interested with Crane in dredging; told him I would have to see Crane first; that I had been authorized before that to bid for Mr. Crane, and I thought it was likely I would put in the bid the next morning for $40,000 — a sweeping bid; this conversation in Tenneys, Flower & Abercrombie's office, part of it in street. Had made a bid myself previous to this time for part of this property; made that bid on account of Mr. Crane; I was authorized to bid by Mr. Crane. Never heard but what assignee was satisfied with bid. Saw Hancock in street next morning; told him I would make the bid; afterwards, on that day, made the bid; after I made bid, saw Hancock; said bid was too sweeping — it included old machinery at the yard and

duplicates; think he objected to them, and I erased those words in the bid; bid was in writing. Mr. Kimball, of the firm of Miller & Kimball, drew up bid in an office in this building; I think Mr. Wilson's, a lawyer, Mr. Miller was present and I; I had been to Mr. Hancock's and back, was present part of time. The bid was handed to assignee by Mr. Miller — excuse me, not Mr. Miller, that's wrong, at Hancock's office; I was present; don't think there was any conversation at the time concerning bid, between me and assignee; went out with Miller at the time, and Kimball remained with assignee; I think they were in conversation as we went out; don't recollect that I heard any conversation at the time between Kimball and assignee; Kimball was talking with assignee as I came out of the office, in relation to bid, but don't recollect what it was; the bid was given by me for Mr. Crane; assignee understood perfectly that this bid of $40,000 was authorized by Mr. Crane; we had talked that matter in the street that morning and the evening before.

Think it was July 2d I handed in my bid; don't recollect day of week. Saw assignee in afternoon, when I erased those words from bid. Can't say when I next saw him; saw him nearly every day, sometimes two or three times a day; had several conversations with him after that, between that time and 9th July, with regard to bid; talked the matter over when I would see him on street or at office. Learned that district court had confirmed bid on 9th July. About three in afternoon went to Hancock's office. A man informed me that Hancock had gone to Miller & Kimball's office, and on the way to their office, in same block, I met Mr. Hancock; it was on the sidewalk; had just stepped off the steps, going south from Miller & Kimball's office; had a conversation with him there; he said first, I think, "You, gentlemen, are the lucky parties," or something to that effect; told me the Judge had awarded property on my bid. I said we had better go to Mr. Crane, and he would make arrangements for paying the money and turning over property. He said very well, he was the man he wanted to see; jumped into my buggy and we drove to Crane's office,

corner Washington and Canal. Told me he had been to Miller & Kimball's office, looking for me. Think he said that Miller & Kimball told him that Crane was the man he wanted to see, and he thought he would find me there. We went directly to Crane's office; found Mr. Woodbury there. Woodbury manages Crane's business in his absence from the office—confidential clerk. Think George Crane was present. In the office Hancock produced an order of court and passed it to me; I read a few words and then asked him to read, and he did so. There was some discussion as to its including the estate of Fox and Howard, and Woodbury spoke up and said it didn't cover exactly what he thought it ought to. Hancock said a clause further on would make it appear all right. He asked Woodbury if he knew anything of this matter. Mr. Woodbury said he knew it was all right, that Crane was ready to pay for property when it was delivered. Talked the matter a half hour with Woodbury, and then a little with Woodbury and me, waiting for Crane. Left a copy of order for Crane with Woodbury. Thought it wonldn't pay to wait for Crane longer then; would come over again. Took him in my buggy to corner of LaSalle and Madison and told him I would drive to find Mr. Crane, and let him know the bid was awarded. Went to corner of LaSalle and Washington, north on LaSalle; met Crane near corner, talking with Col. Ellithorpe. Told him then and there property was awarded on bid; he said "all right," to see Hancock again and tell him it was all right, and money was ready when convenient to turn property over. Went to Hancock's office; Hancock there; told him what Crane had said; went from there to West Side. Hancock asked Woodbury, in conversation held at Crane's office, what he knew about it. I have testified to that before. Certified copy of order left with Woodbury. Hancock read this order in presence of Woodbury and myself. It was an order from court, ordering him to sell property and execute the proper papers on the bid—on our bid. Don't recollect what he said of Crane in this conversation, except in a general way, wishing Crane was there, regretting the bother. Said to me, prior to that time that Crane was all right, financially. Hancock asked

Woodbury if he knew anything about bid, as I said before, and Woodbury said it was all right; that he knew Mr. Crane had made arrangements to pay for the property, and money was ready at any time when property convenient to be delivered; conversation to that effect. Recollection is, that Woodbury told assignee that Crane had made arrangements to pay for property. Don't think assignee spoke of Crane's financial responsibility in that conversation. After I left assignee last time, on 9th, met him about 11, Saturday. Crane told me that morning, before I went to Hancock's, that I had better go over, and, if Hancock was not too busy, make some arrangements for turning over property; to tell him, and see if Hancock was there, and probably Hancock would go with me; went to Hancock's, told him what I had come for, and asked him to take a trip to Calumet that afternoon. Think he said property was all right, and that it wasn't necessary to go down there.

By Mr Tenney. Give his words, if you can remember them now.

A. That's as near as I can remember the substance. Think assignee spoke of property being scattered round; that it was desirable to turn over property, and that he was ready as soon as money was paid; think I told him Crane was busy that day, but would be ready to pay money, or part, on coming Monday; that he would pay as soon as property was turned over, and would like to have it turned over Monday; probably could transfer property and get through all proceedings by three o'clock Monday.

By Mr. Tenney. Now tell what he said and what you said.

Could not give assignee's exact answer, but substance was that it would be all right, and he would be ready to turn over property Monday; wasn't with him to exceed five minutes; don't remember any more conversation at present. Left the office then; am not sure whether went to Crain's, or Miller & Kimball's office. This was somewhere about 11, perhaps 15

past; did not see assignee again that day. Saw Crane that day; was at his office good part of day.

Q. About what time of the day was it when you saw Mr. Crane?

Objected to.

(Form of question changed.)

Was at Crane's office part of afternoon, two or three hours.

Q. Well, the fore part of the afternoon or the latter?

By Mr. Tenny. What has that to do with us?

By Mr. ——. We will show you presently, if you will give us a chance.

Think I came directly from my dinner to Crane's. Got down at two, saw Crane; staid together two hours at his office.

Q. Well, did you have a conversation at that time with Mr. Crane, with respect to what had transpired with the assignee in the morning?

Objected to.

(Form of question changed.)

Next saw assignee about 11, or 5 minutes past, Monday morning, July 12. Left Crane near Corn Exchange Bank, and walked down ahead to assignee's office, and said Crane would be along in a few minutes.

Q. Well, what was your business with the assignee—did you go there to claim the property?

By Mr. Tenny. Tell what took place that will show what his business was.

Was there in connection with Crane to pay for property and claim papers, complete sale. Assignee wasn't in office

when first went in; don't know where he was. Was there perhaps two minutes before he came in; Mr. Skinner and two other gentlemen were there. These gentlemen have desks there; usually saw them there; think name of one was Thomas. Crane came in perhaps two minutes after Hancock. Before Crane came, I told Hancock he was on way with money to pay for property; something to that effect. Assignee asked if Crane was willing to assume one-fourth interest of tug Hewitt, or allow one-fourth interest to Anson Fox, or words to that effect; we had talked about that before. Then asked me if I was willing to take property where it laid, up north — dredge at Sheboygan, and other property at Calumet. Told him I had partly understood property was to be delivered in district, but wouldn't stand on that question; if that was understanding of court that we were to take property, well and good, we would do it. First thing Hancock said of another sale was, "didn't I tell you there were wiggles in the water last week." Told him he had said that a good many times. Did not know what he meant; he said it in joking way; was generally joking. Says he, "Didn't I tell you somebody would raise you in this bid; some man would be along with more money than Mr. Crane showed." Talked in that joking way; told him he had made some such talk; don't recollect exact conversation. After this he says, "The property is sold and paid for." Says I, "You are joking, Mr. Hancock." Says he, "No." Asked to whom he had sold it. He took out piece of paper, a little slip, and held before face, and pretended he was reading, and said, "Sold to this man, Mr. ——." I says, "Mulligan, isn't it?" He says, "Yes, that's the man." Thomas was there; then thought it a joke, sure. About then Crane came in. Didn't say, when reading paper, that there was "a wiggle in the water."

Was there when Crane came in; he and Miller came together; I was sitting at end of table; think both shook hands with Hancock. Crane made some remark about that he came as agreed on Saturday, to make deposit, and have property turned over when convenient. Think Hancock answered, "you are

too late Mr. Crane, the property is sold and paid for." Crane says: "Didn't I agree to make you a deposit on account of this property, and you were to turn the property over to us to-day." Hancock replied, "You are too late, Mr. Crane—the morning has expired—the morning has gone"—to that effect. Crane says, "It is only ten minutes past eleven—isn't it morning until noon?" Mr. Skinner took out his watch and remarked, watches were same, or something of that kind. Assignee made no reply to this that I remember. Think that Crane made some remarks, that it was a fraud, that he was defrauded of his rights, or to that effect. Said that to Hancock. Don't recollect further conversation at that time. Went out of Hancock's office at once, and went to Judge Blodgett's room; was in Milwaukee, Sunday, July 12th; went to see Conro on business for Crane; Albert Conro, one of defendants to our petition; saw Conro about 9 or 9½ in forenoon; had a half or three-quarter hour conversation with him; Mr. James E. Miller of Miller & Kimball went with me to Milwaukee, and was present at this conversation. Went to see if Conro wanted to buy ¼ of this property for Mr. Fox. Saw Mr. Conro in relation to this matter, at his home in Milwaukee; Mr. Miller with me. After we arrived, Miller introduced me to Conro, told him had come to see if he would furnish money to buy ¼ interest in this property for Fox. Said he would furnish money to buy ¼ or more; would back Fox for $30,000 to buy an interest in the property; Conro said in general way, he was in dredging business—had all the property he wanted, but wanted to help Fox, and would back him in any deal with us to amount of $30,000; that he was in dredging business there and did not want more dredging property; that was conclusion at that interview; Conro was to come to hotel in afternoon and talk it over; I think hotel was Plankington House, on west side of river. Walked out in afternoon; clerk told me on return he hadn't seen any one looking for me; went to Conro's house; Conro said he had been down to hotel and I was out; stopped half an hour and talked with him. Last thing he said at second interview, and I think also at first, that he had got to get money on dredging estimates next day, and then would

come to Chicago late Monday night or Tuesday morning. Came to Chicago on any deal we could make with Fox, or any slate fixed up here with Fox; would furnish him amount before stated, to buy interest. This was 5 o'clock in afternoon of Sunday. Came down in boat, which leaves 6½ or 7, early in evening. Miller at first interview—not at last; he went to the boat and waited at second interview until I came down; Hancock has said to me that he could turn property over at any time, as soon as we were ready to pay for it and make deposit. Don't know as that would be considered a demand; that was the nearest to a formal demand; he never said, if you don't pay or make a deposit I shall sell to somebody; he said in general way, "if you are ready I am ready" to turn over property any time, as soon as you gentlemen are ready to pay for it, and the sooner turned over the better on account of being scattered; want to deliver it and have it done with, or something to that effect. Up to the 12th of July, 1875, I can't remember any dissatisfaction or anything that pointed that way on part of assignee; I told him Saturday, about 11 o'clock, that money would be forthcoming or a deposit on property, and he could turn it over Monday morning, and would probably close up whole thing by 3 P. M. Think he was perfectly satisfied with it; he did not object to it.

Examination continued by John S. Cooper.

Had been working for Crane since 5th January last, as superintendent of dredging, contracting, etc.; had one dredge.

Q. Do you know why, and for what purpose, Mr. Crane wanted this property?

Objected to.

A. For dredging on harbor, river, Lake Michigan, or where work should come up for us.

Q. Was he well or ill supplied with appliances for contracts, before he authorized the bid for this?

Objected to as immaterial.

A. We could have had work for five or six dredges.

On 28th or 29th of June, Miller came to office and talked matters over. He thought all this property could be bought for $40,000, and Crane concluded it a good investment, and would pay big interest on property, and I think we concluded then and there and afterwards, that we would take property if we could get it for that money. Crane said we had better bid on property, and left it, as he does brick, and that class work, I am superintending partly to my judgment. We talked of $40,000 for a bid. At the time of assignees suggesting sweeping bid, I told him on sidewalk, on LaSalle street, that Crane was to furnish money as I had told him before; that I was with Crane in dredging business, and that Crane was buying this property, or would furnish money to buy it; this was evening, 1st, July; nothing said about $40,000 bid, giving money; had a previous conversation with him when I put first bid in on morning 1st, July; asked him that afternoon, when he said thought my bid was highest for some of articles. How it would be if I, or Mr. Crane, should not have that amount of money to pay right down. He said, thought Judge would give sixty or ninety days' time on Crane, or Crane Bro's. good paper. Then I went and told Crane, and Crane said to come back, and tell Hancock we didn't want anything of that kind, but would pay cash for everything we bought; that was on first bid.

Cross-Examination, by Mr. Stiles, on behalf of Conro & Carkin.

We tendered cash; Hancock said it was too late; we should have paid it Saturday, if there had been any formal demand. There wasn't any, Saturday, and we didn't consider there was any hurry till Monday. There wasn't any formal demand Monday, but Crane made arrangements to pay Monday, and then we said we would pay a part or whole on Monday. No other reason why it wasn't paid Saturday. We

made first bid because thought it good investment. Mr. Crane and I talked it over; I bid for Crane and myself. Nothing in bid to indicate any other than myself, except that I talked with Hancock about it.

By Mr. Cooper. Yes there is; it says, "We will pay so much." Can't assign any particular reason why I bid in my own name. Had amount of credit of bid from Mr. Crane; he authorized bid. I expected to take care of property on our account, our means—Mr. Crane's; bid was for Crane; can't assign any particular reason why bid was in my own name; was authorized by Crane; I did it according to Crane's instructions; used my own judgment somewhat; put in bid according to instructions—that he could afford to bid $40,000; Crane gave no reason why I should bid in own name. I was in Crane's employ at time; wasn't in partnership with him; was not employed on salary; was an employe of his; went to Milwankee at Crane's request. Crane wanted me to see if Conro would furnish Fox money to buy interest in this dredging property with Crane. This was after I told Hancock that we had the money ready at any time when property was turned over. Conro said if Fox wanted any of property, he would back him to the amount of $30,000. That was after we bought the property, as we supposed, and before we had paid for it. In starting me to Milwaukee, Crane said if Conro didn't want any of property, he didn't care. He would buy it just the same; he could buy it on his own account; said he would sell Conro for Fox, or Fox, if Conro would furnish money at one-fourth interest in property. Told Conro we came up to see if he would furnish Fox money to buy fourth interest in with Crane in machinery. Fox had not authorized errand. Conro said if Fox wanted interest in property he would furnish money to him. Told Conro by whose directions I came, I think. Told him that we or Crane would buy property next day, and Crane would sell him a one-fourth interest for Fox if he wanted, the same as we bought; I don't think our buying the property depended on what Conro would do. We tendered money next morning. Han-

cock said it was too late. It is not a fact that I did not make up my mind to buy property until interview with Conro. Never met Conro until that day. Know Mr. Fox by reputation a long time—personally only a short time. Knew that he had been in dredging business, and by taking one-fourth would be good man to have with us, and might have some influence. Told Conro we should buy property. Conro said didn't have money then; expected money next day on dredging estimates, and would come to Chicago late Monday or early Tuesday morning, and would bring money to help Fox if Fox wanted one-fourth interest. Didn't tell him Crane said he could advance it on own account.

Cross-Examination, by Mr. Tenney, on behalf of Assignee.

Am thirty; have been interested, in summers, in dredging and sand busines since c have been in Chicago; in business for self last summer—before for others; in dredged sand business last summer; Munson & Burdick furnished me dredged sand, and I sold it last summer; I furnished scows partly; didn't own scows or dredges; they were Crane's scows; I was employed by Crane January last; Crane was interested in various things then—importer of steel, chemicals, etc., in Crane Bros. Manufacturing Co., and in Wright & Lawther's Oil Factory, and think in Illinois Linen Co., and probably other business; nothing else, to my certain knowledge; don't know that he had an office under his exclusive control; his headquarters were at 37 South Canal street; was engaged there selling chemicals, etc., and dredging business—all of his general business. He has owned a dredge for some two years, and scows. He made that office headquarters. Stayed there every day he was in town; he owns a dredge; has for about two years; don't know of my own certain knowledge how he came by it; employed me as superintendent on dredges, and contracting pertaining to dredging; I superintended that one dredge, and took contracts for him, collecting, etc. Spent part of time at office, and part with men I contracted with and was at work with, and at the dredge; was at dredge probably one hour a

day; salary, half net profits of dredging and contracting; I was to draw $75 per month, and more if the business warranted it; was employed in same business up to 1st July, and am now same as I have been; hardly ever made contracts without consulting Crane, and he signed contracts and had general supervision of everything I done; generally consulted him as to matter—not always. Had the first interview with Crane about bidding for this property of Fox & Howard; think about 28th June; don't remember day, but remember occasion; think I spoke about it first; can't give exact words; in substance as follows: Miller came to office; I was there; a general conversation between Miller, Crane and me; Miller said thought property could be bought for $40,000; I said thought it good investment. Crane thought there was money in it, and would be policy to buy it; said he had the money, and would as leave have property in that as anything else that would pay well; in that conversation, Crane was to buy, and I to have portion of property; was to have one-fourth, and pay Crane out of dividends—he giving me time to pay for it, Miller to have an interest after purchase, if he wanted it; not settled then, I think, what interest. He was talking with Crane about buying interest after purchase; some understanding that way, I think, but no agreement.

As I understand, there was an understanding we amongst us should buy and have interest afterwards; think conclusion arrived at was we were to purchase that property and use in that way; nothing said as to in whose name bid should be; that subject wasn't mentioned; Crane backing me, took it for granted I would buy the property at cheapest figure. Didn't go on and do all the rest in putting in bid, but we talked the matter over from time to time. Don't think anything was said about in whose name bid should be put in, but we understood and talked, to buy property, and Crane left matter to me; didn't give his personal attention to it. Don't remember whether that matter was talked over with Miller & Kimball, when bid was written. Think I said to Kimball, when writing bid, to put in my name. Don't remember about that — per-

haps some such conversation. Crane was to have property. Understanding between him and me, I to have one-quarter; he to pay, and I to pay him as I could. Made arrangement with Crane to pay for me; reason was he had funds and I had not. Kimball wrote bid. Kimball & Miller are in dredging business, contracting public works. Kimball wrote because he felt interested in matter, I suppose. He knew all property, and perhaps more conversant with it than me. No reason why he wrote; I think he would have written it if not interested at all. Miller & Kimball to have the interest in bid. Don't know that that was the reason I went to them to write bid. Went to them because I was acquainted with them; friends of mine and a little interested as well as myself; didn't consult with them with regard to terms of bid; they knew, after seeing Crane, that he furnished the money. We talked over how I should bid in property. Don't know that bid was in their language more than mine; we talked over and I settled how I wanted it; what articles specified; talked with Hancock about that; said bid must be in writing. Think I went to Hancock as much as to Miller & Kimball. Had written memorandum that Miller gave me, and think we drew bid from that partly. Everything for sale enumerated in memorandum, and they were more familiar with them than I was. Had a memorandum I had drawn from Miller's, but don't know, in drawing bid, whether we used mine or Miller's; they were substantially alike.

Q. Who else was to have any interest in that contract, that bid?

Objected to for the reason it presupposes that witness has said that some one was to have an interest in the bid, but witness has testified to nothing of the sort — but that parties were to have an interest in the property, after its purchase by Mr. Crane.

Of my own knowledge I know none who were to have any interest in property. When this agreement was made to give or sell any interest in the property, except Miller, Kim-

ball and myself, unless understanding between Crane & Fox, for Fox to have one-quarter interest, by paying one-quarter. Know that was understanding with Fox. Don't know that it was agreement; Fox to have one-quarter if he paid Crane one-quarter purchase money. Hadn't decided who would run property. Crane was to be manager. I was to be general superintendent, and dictate to parties how it should be run, and the manner. Wasn't any agreement that Fox and I should do the work. Understanding was if Fox bought one-quarter, he was to have voice in matter in regard to general business, and I the same. Understanding was, all to have a voice — Miller, Kimball, Crane, Fox and myself. Perhaps Fox and Crane had a different understanding. Bid not put in in behalf of Crane, Miller, Kimball, Fox and myself. Crane had not met Fox then. No understanding with Fox when bid put in. Understanding after bid put in, when Fox saw Crane was to get property. He came to Crane and tried to make some arrangement. This was done after bid was accepted and recommended, but before it was awarded. Knew, from my relation with Crane, that I had authority to put in bid. Had bought machinery before that for Crane. Knew, from our business relations, that I had authority to put in bid on his behalf. Think I have explained why bid was in my own name, as fully as if I had talked two hours. Don't know of any special reason why I didn't use Crane's name. If it had come into my head to use Crane's name, when bid was written, I should have done it. Have bought machinery before for Mr. Crane, of parties we both knew; sometimes charged to me, sometimes to him; went into our joint business.

Q. So that you considered, that you and he, being partners, you had a right to buy machinery for your joint business, that it was immaterial which name you used?

Objected to on the ground that the question presupposes witness to have said himself and Crane to be partners.

Not that we were partners, but any purchase of that kind I made, Crane paid for and authorized me to do business that

way. I considered Crane would pay the same under my name as his, and pronounce it correct; that he would pay for property just the same.

Q. But that your joint interest would be the same.

Same objection.

No reason why it shouldn't be Crane's property after all; when I bought in own name considered it Crane's property; Crane furnished the money. Made this bid with understanding that it was for Crane and Crane was to pay for it, and I to have an interest when I paid. He was to advance money and pay for property; my interest was an after consideration. Sure it didn't occur to me to bid in Crane's name; considered it all the same, as far as Crane was concerned. Didn't think I was misleading Hancock, court or anybody, as I explained matter to Hancock. I didn't consider that I could throw up bid if in my own name, but would make Crane responsible if I bid in it; I bid, too, to buy the property. I supposed it could be collected of Crane in any event, parties knowing I was doing business for Crane, and authorized by him, as Crane's agent. I supposed he was just as liable in that way as if I had used his own name. Knew Hancock understood it; didn't know that everybody knew it, as they were not interested. Told Hancock before put bid in for whom I was doing business, and all about it; talked matter over. Think Miller, when he introduced me, said I was superintendent for Crane of Crane Bros. Mnfg. Co.; not sure he told Hancock first time; but it was talked over and thoroughly understood and canvassed. Told Hancock I was bidding for another man, so that he would thoroughly understand the matter and know it was from responsible parties, and get his money when he turned over property. Hancock never asked any reason; my name or Crane's name, or name in bid never talked over. I volunteered to tell Hancock I was bidding for Crane; that he was furnishing the money, and was ready to pay for it if I got the property. Never explained reason of putting bid in own name, as he never asked me, and he made no remark about

that that I remember. I recollect I told Hancock that Crane was the man who furnished money and paid for property, and property was for Crane; told him that on 1st July, before I put in bid on 2d, I think; it was in evening 1st July, on LaSalle street; was passing back and forth on street, and met Hancock, the same as I would meet any other man, and talked; didn't go there on purpose to see him; that was in regard to $40,000 bid. As to the other bid, I don't recollect where I first told him Crane and I were together, but think it was in his office; think Miller told him, and he talked to me about it — asked if it was Crane Bros. Mnfg. Co.; this was on 1st July; that I was operating with Crane, and he furnished money and paid bills, etc. On 1st July had conversation on LaSalle street; matter fully discussed between us; don't know that this was first time; Crane's name was mentioned; think we had talked matter over before that, in the morning or afternoon of same day; know it was never mentioned before; this the first day I had seen him, and think it was first of July; saw him a half dozen times that day. Think I told him in his office or on the way to the Judge's room to put in bid, that I was with Crane, and Crane would furnish the money for anything I bought; think first time was when I put in my bid. Went to Hancock with Miller, and I think Kimball was along and introduced me, and I put in my bid; didn't tell him that was Crane's bid, but that it wasn't mine; that I was putting in bid for Crane, acting for Crane, he furnished money. Explained how I was with Crane that forenoon, either at office or going to Judge's room or coming back; am not sure whether it was 1st or 2d July — it was a long time ago. Have a distinct recollection of the conversation about Crane, but not whether it occurred in the office or street; know it was at time I handed in first bid; sure it was in forenoon after I handed in bid, in office or going to Judge's room or coming back; we talked together concerning Crane and what we were doing, etc.; told him about having one dredge and being in dredging business. Don't know as this conversation was at very moment of putting in bid or few minutes after — sometime that forenoon; very sure it was that fore-

noon, and before I separated from him, after putting in bid; it may have been on street or on the way to Judge, but am very certain it was that forenoon; feel sure it was in forenoon of that day; it was a few minutes after put in bid, I think; went to Judge's to open bid, and it was on the way, I think; this was about 11 o'clock. Don't know as I was in room when bid was opened; didn't explain to Judge Blodgett that this was Crane's bid; subject talked of in office, and in the morning, too, am very sure; those are my impressions. Think way it came about was that Hancock asked me if I was in dredging business; feel sure he asked me that question; made no memorandum of conversation in writing; we were walking along and talking in a social way, and he made the remark.

Probably I should make some such remark if a man was buying that kind of property of me. Think he asked me if I was in the dredging business, or something of that kind. Told him I was; that I was superintendent dredging for Crane; told him who Crane was, of Crane Bros. Manufacturing Co.; what we were doing, etc.; that is that we were dredging here in the river. Told him this that he might know who the man was, and that he was responsible, and he would get his money; and if he made inquiries he would find the thing *bona fide*.

Did not tell him I was not responsible. He said nothing about its not being *bona fide*. Hancock never said anything about its being in my name, or that it would be *bona fide* if in Crane's name—no such conversation. Not being acquainted with me I supposed Hancock wished to know that the bid was from responsible parties, and I wanted him to know it. Told him I was superintending dredging for Crane; didn't explain the terms on which we were working together. Didn't tell him at that time that Miller & Kimball were to have any interest. Didn't consider that any of his business; did the other; supposed he wanted and ought to know who was backing up the bid with money. Think

he asked me if it was Crane of Crane Bros. Manufacturing Co. He either asked me, or I told him it was one of these brothers; think he asked me; distinctly remember making that communication that day, and think it was that time in the afternoon when we talked the matter over. Think he said he never had met Crane. Am inclined to think he asked me if it was one of the Crane Bros. of Crane Bros. Manufacturing Co.; don't know what makes me think that. Don't recollect telling him how much Crane was worth; don't remember that he asked anything about Crane's responsibility. Think he said he had never met Crane. Didn't say he had never seen him, I think; didn't say he had never heard of him, but asked whether he was one of Crane Bros. Manufacturing Co. Gave him to understand that Crane owned one dredge, and would furnish the money to pay for this property at any time, if we got it on that bid. I told him that Crane was to pay for the property. Nothing was said as to whether the title was to pass to Hancock or myself. Simply told him I was buying the property for Crane; not likely I used that exact language. Have told you as near as I can the language used. Didn't tell him about conversation that took place between Crane, Miller and Kimball and myself. Nothing was said about the title. This is substance of conversation. Saw him that afternoon. Told him about Crane late in afternoon, on sidewalk, after he had asked me to put in $40,000 bid.

By Mr. Tenney. The first bid I am talking about now—the first day — the first of July.

On afternoon of first of July, asked him how it would be if property was knocked off at once and money not ready at moment's notice: he said he thought court would give thirty or sixty days time on Crane's paper; told him I would see Crane; told him afterwards Crane didn't want time, but would furnish money when property could be got. He thought court would allow Crane's paper; didn't ask him to say so; asked him how it would be if money wasn't ready at once; said

thought court would take or would allow Crane's paper for thirty or sixty days; think Crane's paper was specified; thought court would allow it; didn't say the court would take it; he didn't say "Crane's unsecured paper;" said court would take Crane's or any other good commercial paper. Am not positive he said Crane's; am very sure he did; saw him that evening, speaking of conversation on street, I told him Crane had said he didn't want any time on property at all, but was ready to take the property if we got it. At this conversation he was crossing street from your office to his, and we stopped on sidewalk; this was on July 1st, I think, before I put in $40,000 bid; the day I put in first bid; no one by that I know of; think there were some gentlemen present in your office at time of conversation in afternoon; don't think there was any one interested hearing it, perhaps, there. From 2d to 9th of July met Hancock nearly every day; sometimes two or three times a day, and would stop and talk over matter in relation to bid and Crane's going into dredging business, etc. He always understood that it was Crane's bid; didn't go into details every time; we talked it over; he said it was a good investment, that Crane could make money out of it, running it; he thought it would pay, and be a good investment; mentioned Crane's name; can't specify the time when, we talked together from time to time; I don't think, I know we talked over matters of this kind; can't specify words, nothing more than it was a general conversation from time to time. Kimball wrote second bid; don't know whether Crane saw bid before put in; I told Crane after first bid, that it would be better and perhaps necessary to put in bid for more property, or all of it; he told me to use my own judgment, that he would rely on my going ahead in the matter, if I thought proper, and thus authorized me. After bid was written, didn't have time to consult Crane; gave it to Hancock as soon as made out; he was in a hurry to present it to court; I took an impression of it and took it to Crane's office. On forenoon of Friday, Hancock said, "I think your bid will be accepted, and if so, you want to have Mr. Crane around here with forty thousand dollars in his pocket," or something like that, in a joking way, he going up street and

I down; I think that was the language used—Mr. Crane; I feel very sure that is what he said; not positive these were his words; something to that effect; did't stop to have any conversation; suppose he had the impression that Crane was to buy the property, and that was why he spoke of bringing Crane around; he could trust me to bring up money if he saw fit.

Q. Why did Hancock tell you to have Crane come and bring the money, instead of telling you to get the money yourself and bring it?

Objected to on the ground that witness cannot know the workings of Mr. Hancock's mind.

Have not the remotest idea; think he said as I answered before; didn't pay much attention, for didn't feel sure of getting bid awarded me and thought it was time enough after it was to settle that matter. Think I said money was ready at any time property was ready to be turned over. Don't think I mentioned Crane's name at that time. Went over about three o'clock to see if bid had been awarded; Hancock, was not in the office, learned there, from Mr. Thomas I think, that he thought Hancock had gone over to Miller & Kimball's office; that I should think was about three o'clock; got in buggy and drove over to Miller & Kimball's; met Hancock near the steps of Miller & Kimball's office. I should say this was about three o'clock; didn't look at my watch; Hancock did not ask me for the money then and there; told me the sale had been confirmed; he got into my buggy and drove to Crane's office; showed me order of confirmation there, read it to me; we went to Crane's office to make arrangement for Crane—for paying and turning over property; told him we would drive right over to Crane's, make arrangements, get the money and turn over the property, whenever he and Crane saw fit; that Crane was ready for property, something to that effect. Remember that "Mr. Crane" was spoken; we went to Crane's office to see Crane. Hancock did not demand money when he showed me paper; didn't show me paper in street;

didn't tell me what he had been to Miller & Kimball's office for. At Crane's office he didn't ask any one for money on bid. We went together, I asked Woodbury if Crane was in, he replied not, thought he was over in town; I told Hancock I thought he would be in if we waited a moment; we waited. Hancock produced an order, passed it over to me to read, I passed it back after reading a fewelines and he read it aluod; we were there half an hour; think he read order partly for my benefit and partly for Woodbury's; we were waiting for Crane and it was natural to show it to me, as I was interested; never told him I didn't feel interested in it, but Crane was to furnish the money. I don't say the only reason he read the paper over to me was to kill time; suppose he read it as much for Woodbury's benefit as mine; he passed it to me and I requested him to read it.

Q. Well, didn't he read it to base his demand for the money, and didn't he then and there demand the money?

Objected to.

A. No, sir; something was said about Crane's responsibility, and about bids being *bona fide*; he asked Woodbury about it, if he knew anything about it, replied that he did and that it was all right, ready to pay when property turned over; Woodbury had made some remark about way order read, perhaps that drew out Hancock's question; remember distinctly that explanation about form of order took place then and there in Crane's office; Geo. Crane was present also. Neither Kimball or Miller present in Crane's office. Hancock expressed no doubt about bids being *bona fide*, or as to Crane's having anything to do with it.

Drove from office to South Side, and Hancock rode over with me; left Hancock there, telling him I would try to find Crane and tell him property was awarded under that bid. Remember distinctly of riding over with Hancock. Think he got out corner La Salle and Madison Sts. Remember distinctly Hancock's riding back with me; when I parted

with him that was the last I saw of him that night. Went to corner La Salle and Washington and saw Crane, and then went to Hancock and told him I had seen Crane, and Crane had said it was all right; money ready at any time, when convenient to turn property over. This was towards night; it was not so late as six o'clock.

Hancock didn't go to Crane's office again that day to my knowledge; don't think he saw Crane that day; that was Friday. I went over in buggy with Hancock Friday afternoon; had not agreed to bring money there that afternoon. Didn't see Hancock till about 3 o'clock in afternoon after seeing him in morning. In the morning he said he thought property would be awarded on our bid. Hancock did not ask for the money at any time that afternoon; nor did he ask me to bring it around Saturday morning. Didn't promise to bring it there Saturday morning nor Saturday noon, nor Saturday at 2 o'clock, nor Saturday evening, nor at either of these times—that is, he didn't make any formal demand. The only time he asked me or said anything about having money there at certain time, was Friday morning, when, as I met him, he said, "I think that bid will be awarded to you." He didn't ask me for any money then, only told me thought bid would be awarded. Never said anything Friday or Saturday to the effect that if I didn't pay up money he would sell the property; not a word of that sort. Never told him he could, after property was award us on bid. Don't remember conversation with Hancock Monday morning, as you state it, (to-wit: that Hancock asking me Monday morning at 11 o'clock if he hadn't told me to have money there at 2 o'clock, and at 4 o'clock, and then Saturday morning, and then Saturday noon, and Saturday evening, and I had failed; that he had threatened to sell property if I didn't take it; that I said he might if he could, and his asking if this all was not so, and I said it was), I don't remember this as you state it.

He asked me Monday morning if he had not told me before there were wigglers in the water; I assented. Then

there was some conversation in a general way; in a joking way. Thought he was joking in such remarks as that, and "didn't I tell you somebody would raise Crane out," etc., and then Crane came in. "Don't think he said anything of the kind." (The last answer refers to hypothetical conversation at head of this page ——.) He said nothing of what you repeat; he spoke about what he had said about "wigglers in the water," and that somebody would raise Crane out, but these were said before bid was awarded, and not after; he told me somebody would raise my bid and bid more, and I wouldn't get it on that account. Don't understand wigglers remark yet; I did not understand it; I never heard it explained; I might have laughed when he said it. I left Chicago on boat about sunset Saturday night. No company organized to run dredging business when I went there other than Crane, Miller and myself, and letting Fox have one-fourth interest, if he had money to pay for it, or if Conro would furnish him with it. The only talk was of a company of those men, if Conro would furnish money for Fox's portion. Conro was not to have any stock in his own name. Went up to see if he would furnish money for Fox. Crane was to buy out property and run it just the same if Fox came in, Fox, Crane, Miller, Kimball and myself. If Fox came in, he was to have a voice in the matter. These parties would be in, and the only open question was whether Conro would furnish money for one-fourth interest for Fox. Did not tell Conro that Crane had no interest in bid; didn't propose to get up company leaving him (Crane) out. Conro didn't object to having so many partners; Conro didn't object to going in where there were so many persons for the reason that nothing was talked about his going in; he didn't object to going in with Crane; didn't tell him it was my own bid, that Crane had nothing to do with it, and would form a company without Crane. Told him Crane was to buy property and pay for it and sell Fox a one-fourth interest if he (Conro) would furnish him money to buy it; it was perfectly understood that Crane was to pay for property; I was to have one-fourth interest, paying Crane out of profits; Miller and Kimball to buy one-

fourth interest of Crane, and Fox could be let in if Conro wanted to furnish money for one-fourth interest; didn't make any proposal to Conro to buy any stock for himself. No objection made by Conro, I think, in relation to there being too many partners in company; wanting to form new company with a less number. Never said to Conro that Crane had nothing to do with this, that it was my own affair, and I would form a company leaving him out, if that would please him better.

Re-Direct Examination, by John S. Cooper, Esq., on behalf of Petitioners.

It is a fact that Crane did not give instructions as to how, in whose name, or in what form, $40,000 bid was to be put in. Did take an impression of bid and took it to office. Kimball took it to Wilson's office and had it printed — I mean a letter-press copy. Showed it to Crane; he said it was all right; think I went over and showed it to him on way to dinner. This was on July 2d. Miller was acquainted in Wilson's office, and after we consulted with Hancock as to how bid should be drawn; we went in there, (Wilson's office,) to make the bid. Hancock was in his office; I was in and out his office while bid was writing; two were drawn, one didn't suit, and he wrote another, and then I came here and went with Miller and Kimball to Wilson's office. It was impression of bid submitted to Hancock and confirmed by court that was shown to Crane. Don't know about Crane's acquaintance with Conro, except he told me he had seen Conro. Conro had been down to see Crane. In conversation with Conro, don't know the exact words used were, "We will buy the property the next day," but implied that meaning. Think I told him I would come down and Crane would close matter up next morning and buy property; something to that effect. It was fully understood by Conro that my bid had been accepted; think I told him, am not sure. When Miller introduced me, I think he told Conro that this was the man that had bid for Crane, and to whom property was awarded; something to that

effect. Think that is the way conversation commenced. I meant by language, ("we will buy the property the next day,") that Crane would pay for it and have it delivered. By the word "buy," I meant pay the money.

Am of impression that I told Conro, Crane was to pay for property, and would pay for it next morning; don't know that I said anything about an interview between Crane and assignee; feel sure I told him of Crane's paying assignee next morning, that I did tell him. Nothing ever said, to my knowledge, about Conro or myself furnishing money to pay assignee; think Miller had said to Crane that he was ready with his $10,000 at any time to pay to Mr. Crane; Miller was to pay to Crane, not the assignee. Friday night, as I was sitting in Crane's office, Fox rode up and asked if Crane was in, and said to him, "Charlie, I have come around to congratulate you on getting that property." That was Friday, July 9th; that was quarter to six, and then Crane told me for first time. In all I have said about my understanding of this arrangement, I meant an arrangement after bid was awarded to me.

The matter of my having an interest in the bid was talked over on Saturday, before I went to Milwaukee, and Monday morning it was definitely settled, before we came over to town, that he would let me have a quarter interest; there was an understanding before this time, but it was not definitely settled. After July 3d I think there was an understanding that if Crane got property he was to sell them one-quarter interest; know I was authorized to bid for Crane, because he told me to go ahead and bid. Mr. Miller, Kimball, Fox, and myself, were to take this interest in the property after Mr. Crane got it; this arrangement was upon the condition that property was awarded to Crane.

That is all.

TESTIMONY OF JEFFERSON HODGKINS,

SEPTEMBRR 21st, 1875.

And I further certify that on Tuesday, the 21st day of September, A. D. 1875, the said witness, Jefferson Hodgkins, being recalled, testified as follows:

Examination by John S. Cooper, Esq., on behalf of Petitioners.

Saw Carkin on Saturday, July 10th; saw him at Crane's office about half past ten; was there when he called, and Chas. S. Crane was present; remember part of conversation; it was in relation to the dredge property of Fox & Howard; Carkin was addressing remarks to Crane, talking about turning over property Monday; Carkin asked Crane if he was to pay and turn over property on Monday; Crane said he was — that he should attend to it that day, but Woodbury had gone out of town and he was busy, and matter would go over to Monday; Carkin told Crane I had better go to Calumet and see condition of property there; said he had a Calumet ticket with two rides on it yet, that he used summer before, I think; made some remark about that and gave me ticket with two rides on it — a commutation ticket; think I have lost ticket; was going up Madison street that night and noticed something come out of my pocket, and then missed ticket for first time. Carkin also spoke of Crane's sending me to Sheboygan; said Crane had better send me to Sheboygan to see what condition property was in there, and whether it was best to remove it. As I understand, Carkin wanted Fox to have an interest, and I understand Crane had seen Carkin before; Carkin was talking with Crane for Fox's benefit. After tender of $40,000 was made by Crane to assignee, on July 12th, I saw Hancock on street, after we came back from Judge Blodgett's, near his office; Crane had just gone on LaSalle toward Madison, with Mr. Harry Fox.

Had a conversation with Hancock there; said I thought transaction with Conro & Carkin a fraud; he said papers were not made out, the transfer papers, and it was not too

late to raise my bid if I wanted to; told him I would raise bid $500 — $500 above bid of Conro & Carkin — if he would come to corner and find Crane, would give him a deposit of $20,000, and the balance that day if he wanted it; took him by the arm and wanted him to go; he rather refused at first, but went up as far as corner, and around corner on Madison street, but Crane wasn't there, and I walked back to corner of LaSalle street with him; wanted him to go with me to Judge Blodgett's room, he wouldn't go; told him if he would see Crane, or go to Judge Blodgett's room and have this thing stopped long enough to see Crane, he could have all his money, if he wanted it; he said it was too late; that is, the $41,000; he said it was too late, and that he would not bother with me any more; didn't say anything about papers having been made out. I went to office of Crane & Tatham and told Tatham, and he came with me to Hancock's office. Hancock was in office at his desk, Carkin at end of desk, holding up paper to read; understand that was the transfer paper. Tatham done the talking after that. Can't remember Tatham's conversation with assignee; he told Hancock that he was representing Crane and myself in that matter, and should investigate; something to that effect. We were not in but a few minutes, shouldn't think more than three or four minutes.

Saw Harry Fox on 9th July. Was sitting in office of Crane, 37 S. Canal street, and Fox drove down from Randolph street, down Canal street, driving south, and he asked me if "Charlie" was in, meaning Crane. I said "yes," and he says "Charlie, I came round to congratulate you on your good fortune in getting that property to-day," and then he got out and came in. Can't think of anything more just now. Had a conversation with Carkin before that, before 9th July, on Lake street, East Lake, near Dearborn, on morning of 2d July; I told him I was going to put in bid for $40,000 for Crane; he said it was too much, and we had some conversation in regard to Fox bidding $15,000 for property. Fox—Conro for Fox—that is the way I understood it from Carkin

that morning, said he had put in such a bid the day before, that Conro had put in this bid for Fox. He said Fox had friends, but they didn't seem to come forward just then with the money, enough to buy the whole property.

Cross-Examination, by Mr. Stiles, on behalf of Conro & Carkin.

I recollect being in Fox & Carkin's office an afternoon when you were present. It was about time property was sold — somewhere along 10th or 12th of July. Don't think I can repeat my conversation there. Think it was in regard to way assignee had acted. Hardly think you were present then. I was in office a few minutes before you, and think Carkin introduced me to you. Don't think I can divide conversation up so as to tell just what was said after or before you came in. Don't recollect saying anything to you on subject. Don't recollect saying sale to C. & C. was all right, and that I hoped it would turn out to be to my advantage, and that they replied they hoped so too. Don't think I said so. Harry Fox had said to me that day ——

I was going to tell you in what connection I might have said something about it. Don't recollect of saying that or its equivalent. Don't think I ever said in my life that sale to Conro & Carkin was all right.

Q. Did you at that time solicit the influence of Conro & Carkin, or both, to be allowed to enjoy the benefits of that purchase by Conro & Carkin?

Objected to.

Think I said Crane didn't have but one dredge, and we wanted more; something to that effect. Everything was said in a general way. Don't think Fox or Carkin asked me why I hadn't put up money, if I wanted property. Think I complained of being unfairly treated, either while you were present or before. No one took part in conversation while you

were there, but Carkin, Fox and myself, I think. Think but little was said about the matter after you came in.

Cross-Examination continued, by Mr. Stiles, on behalf of Assignee.

Q. Mr. Hodgkins, on the 12th of July, after you had found out that this property had been sold to Conro & Carkins — when you went to Hancock's office and saw him and talked about the raising of the bid — didn't he tell you that if you would raise the bid and put up the money, he would take it to Judge Blodgett and submit it to him, but he wouldn't go to him with any more straw bids, and wouldn't go to him unless you put up the money?

Objected to on the ground that it presupposes that the witness has sworn that he went to Mr. Hancock's office and had this interview in Hancock's office, whereas he states that it was on the street.

By Mr. Hancock. Right at the front door — there is where it was. Don't think he told me in these words. He gave me to understand I could have property by raising bid. Nothing was said about "straw bids"; the other — about his reporting to Blodgett, if I would put up money — may have been said; I am not sure. Am not always sure about things in my favor. I only testify to things that I remember distinctly and plain. Havn't discovered that I have a one-side memory. Don't remember of Hancock using words to the effect that if I would raise the bid, he would go with me to Judge Blodgett and submit, but wouldn't go with me with bids without the money. Remember he said if I would raise bid, it was not too late then. Told him I would, and wanted him to go to corner. Told him Crane would give him that $20,000 he had with him, right then and there. Remember saying words to that effect, and we went to corner and looked for Crane. Don't think he said he would go with me to Judge Blodgett. He said it was not too late — that the papers were not made out — to raise the bid. Think he used these words.

Don't remember that he said he wanted money put up before he would talk further with me. Don't think he said anything to that effect. Don't remember that he said anything about money. I was in a hurry, and we had but few minutes' conversation. No one overheard conversation that I know of; we were walking up to the corner during part of conversation, and people on street, as usual, but no one walked with us, or overheard us, that I know of. Some walking or standing on street, as we were, might have overheard our conversation. Never went with Hancock to Crane's office but once. Hancock never rode with me in a buggy but once, I think. He rode with me from Miller's to Crane's office. Then he rode back with me; I consider that all one trip. He rode back with me. I feel sure I never rode with him except on that trip to Crane's office and back. Remember of being at Crane's office with him. Woodbury was in the room, and I think George Crane. Think there was no one else present. Don't remember of a thick-set, bushy-whiskered man named Kay being present.

Don't know of any man in Crane's employment of the name of Kay or Key. He has men in his employ that I know by sight, but couldn't tell the names of. Don't think, at that time, I spoke with anyone in Crane's employ, but Woodbury; may have, with George Crane. I was familiar with Woodbury and Crane; am not sure he had any more men in his employ at office. He had a man in the street most of time collecting, or selling; don't know his name; don't know whether he was an Englishman. There had been a man in Crane's employ, a very stout, short man—quite an old man. Don't think he had side-whiskers; he would weigh 300 or 400 pounds. His name was Faber or Farish, or some such name as that; am not sure. Think he was not there that day; am not sure he was in Crane's employ at that time. That was independent of my business, and I had nothing to do with it. If he was in his employ, think he had something to do with sale of chemicals, files, etc.; could not say, but think he had. When the certificate of confirmation came into my possession on Friday, 9th July, it was in possession about two minutes—

long enough to give to Woodbury; next day, Saturday, if I remember right, I took it from desk or pigeon hole, and took it to Milwaukee, and on Monday gave it to Messrs. Tatham & Crane, at their office; am not sure, but think I gave it to them Monday; it may have been since; it was after the sale to Conro & Carkin.

DEPOSITION OF JAMES E. MILLER,

SEPTEMBER 18, 1875.

James E. Miller, of the city of Chicago, county of Cook, and State of Illinois, being first duly sworn, cautioned and examined in the above entitled matter at the time and place above mentioned in his oath, says:

Examination by Mr. Crane, on behalf of Petitioners.

Business, contracting, dredging and dock building, and general contracting; in that business in Chicago for 18 years, more or less. Know Bradford Hancok; have known him since sometime in June, I think; have known Harry Fox 16 years, perhaps; first became acquainted with Hancock at his office on LaSalle street; went there to look over schedule of property of Fox & Howard, advertised for sale—met him first there, I think; had a conversation with him in regard to property of Fox & Howard estate; told him our firm, Miller & Kimball, thought of bidding on some of property; Hodgkins was not with me first time I called; have had conversation with Hancock when Hodgkins was present; on 2d July distinctly recollect of meeting him there with Hodgkins; Hodgkins and I were there together; think we went there togother. Think I introduced Hodgkins to Hancock; nature of visit was to put in bid for property; bid represented to us to be bid of Crane represented by Hodgkins—amount $40,000; was present when this bid was handed to Hancock; Hancock wanted it changed a little—"duplicate

machinery" struck out, or something of kind. It was rewritten and handed back, and he expressed himself satisfied. Something was said about Crane's connection with bid by Hodgkins, and certainly by my partner, Kimball, and I think by myself. I said it was C. S. Crane's bid, he backed it. My recollection is decisive that this was distinctly said. Don't remember anything else in particular said in respect to Crane at that time; he said bid as altered would take property; interview was not very lenghty at that time; staid but a few moments; met several parties there. Next met Hancock in afternoon, about 2 or 3 o'clock; met him on sidewalk in front of our office, Ogden building. That was on Friday, July 9th; said he was looking for Hodgkins, and showed me award of court. Told him he would find Hodgkins at C. S. Crane's; that Crane was real bidder, and he would find him corner of Canal and Washington streets, and he left me; he gave me impression he was going to see Hodgkins. This was Friday 9th, 2 or 3 o'clock, just after return from dinner; had not gone to office. No one was present, we met on sidewalk. Next saw Hancock Monday morning, July 12th; didn't have conversation with him; went with Crane to his office to tender money; this was on Monday—didn't see him Saturday at all. Monday, little after 11, Monday 12th, at his office. Found Hodgkins, Mr. Skinner and 2 or 3 others, I am not acquainted with them. I went with C. S. Crane. We all bade Hancock good morning. Crane said he had come as agreed upon, with money and tendered him 2 certified checks for $20,000. Hancock said it was too late; he had sold property to other parties and got the money. Crane said, "Didn't you agree with me on Saturday night about 5 o'clock that I should come up here and pay this money in to you?" Hancock said morning was past, Crane said a man didn't carry $40,000 in his pocket, he had gone to bank as expeditiously as possible and brought the money. Hancock said, "too late." Crane handed checks and says I tender you money. Hancock says, as far as that goes, the checks are good and handed them back. Crane repeated what he said and that he would go and see Judge about it; it was about 10 minutes past 11. Looked at my watch when

Crane said it was only about 11 o'clock and asked if he called that afternoon. Hancock said he considered morning past and property had been sold to other parties. Didn't say to whom he sold; don't think question was asked. Crane was indignant, expressed indignation and surprise. Didn't hear the expression "wiggles in water" used then. Was in Milwaukee Sunday, July 11th; went to see if Conro would furnish money to Harry Fox to buy part of machinery; Hodgkins with me; saw Conro at his house at 9½ or so; stated that Crane was willing to give Fox ¼ interest for $10,000, if he would furnish money; Conro meditated a moment and said Fox wanted more than $10,000 in property; that he didn't want any business in Chicago, had enough where he was, but would furnish Fox $10,000 to $30,000 if he wanted it. That was substance of conversation at time; Hodgkins saw him afterwards alone; we made a call again in evening; said said he would see us at hotel; said he would furnish $10,000 or more if Fox was satisfied; said he could not come to Chicago till Tuesday; couldn't make money arrangements until he got estimates from railroad company, and that he would not get that till Monday, and be here Tuesday; wished proceedings stayed until he came.

It was talked to Conro that Crane was to pay $40,000, and if he would furnish $10,000 for Fox, Crane would let Fox have quarter interest. *He must have understood Crane was to pay Monday, as he wanted it postponed until Tuesday; I remember that distinctly.* Been in dredging business nineteen years in December; in business here sixteen or seventeen out of that. First in employ of Martin Green; he sold to Fox & Howard in 1862 or 1863, and I was in their employ until June 1st, 1875 — for twelve years or thereabouts. Am familiar with property in regard to kind and quality, and with working of machinery of that character, and know what it can earn when employed. Of this property, all of their dredges and spile-drivers are at work, and two tugs; three dredges at work for city of Chicago, and one for Guetches & Co., at South Chicago; Guetches & Co. dredge working for near a month; one dredge almost constantly at work for city

for two or three months. Think net profits of property from 12th July to present $300 a day; have not all been in constant employment; one about two-thirds of time, and now all. The net earnings of dredge working for city of Chicago is probably $100 per day — that is simple dredge — of course it takes other appliances besides dredge. Four of dredges at work all of this month pretty near, and one dredge from Sheboygan didn't begin work until the last ten days.

Examination continued, by John S. Cooper, on behalf of Petitioners.

Met Hancock July 9th, that being first time since July 2d; may have met him more than that; had told him "C. S. Crane is the man to go to"; he said he had understood so; positive this was Friday, July 9th; have every reason to recollect it. Hancock understood it was Crane's bid when it was put in; know it was Friday, because I was busy elsewhere Saturday. Saturday about two I was at Crane's office; know it was day sale was confirmed. First time went to see Hancock thought of bidding for property; did put in bid for part of property July 1st. Went to Milwaukee at Crane's request, made on Saturday afternoon about two or three o'clock, I think; saw Crane again at boat before we started; gave us definite directions if Conro would put in $10,000 for Fox he would let him have one-quarter interest; wanted to see if Conro was prepared to do so. Suppose reason Crane was willing to give interest was that Fox went to see him a good many times, and wanted an interest; know he went to see Crane; don't know of my own knowledge what he went to see him for. Fox never detailed conversation between him and Crane. Saw Fox that Saturday afternoon, and told him Crane was willing to give him a one-quarter interest if Conro would pay the money for him; didn't state whether he would be content with a one-quarter interest.

Cross-Examination, by Mr. Tenney, on behalf of Assignee.

Was in employ of Fox & Howard up to 1st June, not to 1st July; was with them until petition in bankruptcy filed; I was their superintendent; I was paid $5,000 salary; had no contingent interest in business besides that; had no interest in the business whatever.

I recollect the time when first bid was made out — the bid of Hodgkins; suppose I had somewhat to do with that bid. Hodgkins said Crane was willing to bid $40,000 on stuff, and wanted us to make out bid for $40,000, and Kimball wrote it for him. Don't think I used any influence whatever to induce Crane and Hodgkins to bid; may have gone over there to talk over matter. Hodgkins had been to see us frequently. At first he wanted to bid for part and we for part, and he wouldn't interfere with us or we with him in bidding. On that arrangement he put in a bid for part of stuff and we put in bid for part, in first place. This was on 1st July.

We didn't withdraw bids, but Hodgkins got leave from Hancock to put in supplementary bid for $40,000 for whole, which he did; bids were not withdrawn, but didn't amount to anything, for other bid was larger and covered whole. We had an understanding that if Crane got the stuff he would let us have one-fourth interest. Expect it was on this basis we interested ourselves in making out bid; we expected to have an interest. Don't know what Hodgkins' interest was to be. We were to have one-fourth if we put in our money; haven't put up any money yet; haven't furnished any of money that has been put into court; haven't furnished a cent of our name or credit to furnish money. There was no specified time for putting in money; didn't understand that we were to put in one-fourth, and then, if we got Conro to furnish one-fourth, that $10,000 were to be put in and then ours, and then Crane the rest, but that Crane bought stuff and we were to pay him; no time mentioned for that. I did not write these bids for Hodgkins, Mr. Kimball did. Kimball signed Hodgkins' name by authority. Don't know whether Hodgkins signed his own name;

didn't see signature; this signature is in Kimball's handwriting; Hodgkins told him to write the whole thing for him. The bids were all written by Kimball and signed by him; they were made out in Crane's name because he acted for Crane. Crane wasn't present; he authorized Hodgkins to do business, and, being Crane's superintendent, signed his own name. Know that is reason because I heard Hodgkins say so—that Crane authorized him to bid in that way. Didn't know that Hodgkins was an irresponsible man; never heard question raised before. Don't think it was discussed at all in whose name the bid was put in; was present when first bid was put in—present both times when those bids were handed in. Kimball told Hancock, when he handed him, it was Crane's bid—Crane was backing it. Hancock opened bid in our presence, looked it through and made his comments, being satisfied with it. We all understood it was Crane's bid and we wanted Hancock to understand it. Can't tell why they didn't put his name on paper, so he could see it. Words used were that "Crane backed the bid—that it was his bid—he backed it," words to that effect; that was understanding; that it was his authority. Don't know that Mr. Hancock made any remarks; don't think he inquired who Crane was—he may and may not; can't recollect that he made any remarks about Crane at all at that time. I recollect my saying it was C. S. Crane, of Crane & Bros., and of Hodgkins saying it. Don't know as Hancock replied, but he must have heard it. I think we all said it; we were all interested; I should say three of us said it one after another; repeated it right over one after another. This was about $40,000 bid. Can't say whether Hancock said a word or not; he seemed satisfied. We were in Hancock's office, standing all in a huddle; we may have interrupted one another and I suppose we talked pretty closely together; Hancock was in reaching distance. When we were going out there were several interested creditors in there, and we told them of the bid, and it was Crane's bid, and, if I remember distinctly, one or two expressed themselves as perfectly satisfied with Crane, and I think one of them said he would so inform Hancock of Crane's responsibility. Have not mixed up conversation I had

in hall with creditors and that which I had with Hancock; can't account for it that Hancock says there was nothing of that kind said in his presence. Don't think he made any inquiries in regard to who Crane was; supposed he knew; made no comment on the fact of one man's bidding in the name of another—none whatever.

Whereupon the further examination of said witness was adjourned until 9:30 Saturday, September 18, 1875, at which time the said witness, J. E. Miller, testified as follows:

Cross-Examination continued, by Mr. Tenney, on behalf of of Assignee.

And I further certify that on Saturday, the 18th day of September, A. D. 1875, the said witness, James E. Miller, further testified as follows:

Cross-Examination continued, by Mr. Tenney, on behalf of Assignee.

This conversation about bidding in another man's name was on Friday, July 2d, when $40,000 bid was put in; am certain of day and bid; can't say that I was present 1st July, when Hodgkins put in bid; had nothing to do with that first bid; know about its being put in; don't know whether I heard anything said to Hancock about Crane that time. It was on 2d July, when $40,000 bid was put in, that I heard this conversation in Crane's office, and that I came up with rest of crowd and Hancock; I didn't say we came up with him to court room; I think, after we broke up, we did not go together anywhere from his office; think I went back to my own office. I never had anything but a salaried interest in business of Fox & Howard, while running; had no guaranteed proportion of profit, but guaranteed salary of $5,000. For last two years, up to first June, I have been fixed at $5,000; that was all I had. Can't tell whether I would have had more, if their profits had been a million. At one time, if they made over a certain amount, I was to have commission of ten per cent. on their net

profits as additional salary; but for last two and one-half years salary has been fixed at $5,000. At one time I was to have ten per cent. additional salary on amount of profits over and above $50,000. Yes, I have received more than $5,000 on that agreement. Two and one-half years ago profits had been pretty large, and they were not exactly satisfied to pay me the commissions, and I wasn't paid last year. One member of firm thought, as business was slacking up, $5,000 would be enough, and my salary was fixed at $5,000 without any dispute. There was no written agreement at that time, only a verbal one. Howard expressed himself as not satisfied, and it was confined to local business in river. Before, I was to have commission of ten per cent. on general work. That was in 1872, and they were rather dissatisfied paying any commission, and finally it was tacitly agreed I should have $5.000; and so placed on the books. If they had made $100,000 on city work, it was optional with them whether they gave more. Considering conversation, I don't think I could have claimed more. Had no interest in any special contract, or any proportion of pay on them. Went up to Milwaukee Saturday night to see Conro. Wanted to see if he would put in $10,000 for Fox; he had no expectation about whether he would put money it then, or come here and advance money. No programme was completed then. Crane requested me to go with Hodgkins, to introduce him to Conro, and see if he was willing to put in $10,000 for Fox, with Crane. Those were the directions. That was as far as we went on the programme. That was instructions we had. Don't know necessity of it. Crane was to take property, and I suppose Fox wanted an interest in it, and Crane was willing to have him come in if Conro would furnish the money for him. Crane had an appointment to pay money at certain time; expected to pay Monday. Didn't go up expecting to get money then and there; didn't expect to bring back money; wanted to see if Conro would put in $10,000 for Fox; don't suppose it made any difference whether he put it in that day or next, only Crane wanted to be satisfied whether he wanted to do it. Can't tell you why Crane wanted to be satisfied; had only a few minutes conversation with him; he re-

quested me to go and introduce Hodgkins to him; didn't understand that completion of transaction depended upon Conro's putting in any money. Crane told me distinctly that he was to take the stuff. I don't know as he was particularly anxious to have Conro help Fox. We went up to see if he was willing. Didn't understand, if he was willing, $10,000 was to be advanced then and there and applied on bid. We had no instructions about bringing back any money, or bringing Conro down, or anything of kind.

Re-Direct Examination, by John S. Cooper, Esq., on behalf of Petitioners.

Didn't have any such question as to ask Conro for any money, in that conversation. Nothing said that would impart that. When Conro spoke of staying proceedings until Monday, I supposed he referred to paying the money. He thought Fox perhaps wouldn't be satisfied, and he wanted to see him before he advanced money for him. Didn't understand, when we left, that Crane would wait in paying money. Don't know whether I told Conro money would be paid Monday morning or not. I wasn't principal in the matter, and don't know. Had no authority from Crane to negotiate with Conro in anything in reference to Crane's bid. It was simply, as I understood, to see whether, after Crane got property, Conro wanted to come in and put in money for Fox. Crane had told me that Fox was very anxious to have an interest in the dredging business; didn't want to give it up; and he had given him to understand if he would put in his money he would come into amount of one-fourth—perhaps $10,000. Do not know, of my own knowledge, that Fox had referred Crane to Conro as the man who would put in money. On 2nd July, when $40,000 bid was put in, Hodgkins, Kimball and myself were all there. There wasn't room enough in Hancock's office, and we went into this building to a friend of mine, and there Kimball wrote bid. Kimball, Hodgkins and myself were there. He (Hodgkins) directed Kimball to sign it; said his hands were cold, and he wasn't supple in writing. Asked Kimball to write

it, and when written he said, "Sign my name, and it is all in the same handwriting," and we all went down to Hancock's, and Hancock opened it, and there was same little striking out of one or two items that he said might complicate the thing, and then expressed himself as being satisfied with the bid, and Kimball told him first, I think, it was Crane's bid, and it was talked generally between us all that it was Crane's bid—Hodgkins, Kimball and myself. Crane didn't show a bit of anxiety to have Conro go into the company as co-partner. He showed no interest to have any of them come in, except he was willing to help Fox, if he would put in money; willing to let him have a silent interest, not being an actual manager. The arrangement by which we were to have an interest in property if obtained by Crane, was made after July 2nd. It wasn't talked of with any definiteness as to the interest, I think, until Saturday, the 10th of July.

Re-Cross-Examination, by Mr. Tenney, on behalf of Assignee.

We had a sort of understanding that we might go into a co-partnership in some manner. When we first put in the bids, Mr. Hodgkins talked it up with us; that we might possibly unite in business, and we had a business interest as far as that was—a general interest. The terms were not fixed. Can't say that we had any talk of the kind with Crane before 9th July—before bid was awarded to him. Don't think we had; it was with Mr Hodgkins.

DEPOSITION OF DORR A. KIMBALL,

SEPTEMBER 18, 1875.

Dorr A. Kimball, of the City of Chicago, County of Cook and State of Illinois, being first duly sworn, cautioned and examined in the above entitled matter at the time and place above mentioned, on his oath, says:

Examination by Mr. Crane, on behalf of Petitioners.

Reside at 773 Monroe street, Chicago. Have lived in Chicago ten years. Am contracting for public works — dredging and deepening of river makes up part of public works. Up to last of May, 1875, I was book-keeper for Fox & Howard; had been in their employ since 1865. Am acquainted with Bradford Hancock since some time in June, this year; called at his office to see him after I learned he had been appointed provisional assignee of Fox & Howard estate. I have a partner, his name is James E. Miller; he is the only partner I have. At that interview spoke of estate, manner of receiving bids and something about property. I don't remember exactly. This was within two days after announcement in paper that he was appointed provisional assignee. Don't recollect when I next saw him; saw him two or three times before 1st of July. Saw him on 1st of July. Went there with Hodgkins and Miller, and either Miller or I put in a bid for part of the property. Don't remember what was said — have forgotten. Yes, there was a conversation in the afternoon of that day by Hancock about putting in what he called "a sweeping bid." He said he thought a sweeping bid, somewhere in the neighborhood of $40,000, would take stuff he had for sale. This occurred in his office; think Miller and Hodgkins were present; think other persons were present, but do not remember. Nothing else said in reference to sale by assignee or myself, or others that I heard. Left office shortly afterwards; don't remember where I went. Had a conversation with assignee next day, July 2d, in his office; Miller and Hodgkins, and I think, Mr. Besley were present. Hodgkins came to me and said he was authorized to bid $40,000 for Crane, and wanted me to write bid. I did so and went with him and Miller, and we gave this bid to assignee at his office. I think Hodgkins came to our office on southwest corner of Lake and Clark streets. Hodgkins requested me to go to assignee's office with him. Bid was written in Spafford, McDaid & Wilson's office, in this building. I wrote it; Mr. Hodgkins did not sign it, I believe. If I recollect rightly I asked him to sign it, and

he said, "you sign my name to it." I think his hands were cold, stiff, or numb ; I don't remember exactly. After I had written bid I went with him to Hancock's office ; Hancock was in. I think Hodgkins handed bid to Hancock, and I stood by and we had some talk about it. I remember I told Hancock, whom Hodgkins represented at the time, as near as I can remember, told Hancock that it was a good, straight bid ; that it was Charles S. Crane's bid, and I knew it was all right. Hancock read bid and made some objections to the manner in which it was written ; wanted prices opposite items, instead of lumping bid ; some remarks upon that. Don't remember now that he made any remarks about Crane's business responsibility or standing ; he didn't, I think, make much remark about my statement that it was Crane's bid ; he was quiet. We were all talking about bid. I heard Hodgkins tell him (Hancock), Crane was his backer. That was the substance ; don't know that these were the words ; don't know exactly what was said. We were all talking about bid and Crane, and itemizing bid. When I was present nothing was said to indicate that it was Hodgkins' bid. Don't remember anything of the kind said ; did not hear any conversation with regard to whether Hodgkins was a responsible man. Hancock said unless old stuff in yard was made more specific, he would not recommend bid. Think bid wasn't amended at that time. I remember saying to Mr. Besley (while Hancock was present, and I think within hearing as it was in his office, as large I should think as 15 feet square), that this was a good, straight bid — nothing bogus about it ; and he said to Hancock that he should be at court and wanted everything all straight ; that he was watching it and had some interest in it. Don't know that Besley used the name of Crane to assignee. Hancock was sitting at desk and we were standing up around the desk; we were close together. Don't recollect any more of conversation now. We then left assignee's office all together. Think Hodgkins handed bid to assignee. Bid was talked over generally. It was understood among the whole of us that Crane was backer of Hodgkins, or that it was Crane's bid.

There can be no doubt that the assignee so understood it from our conversation; afterwards, had a conversation with assignee in relation to bid; it may have been between July 2d and 9th; remember seeing him Friday afternoon, about two. He came to my office. Wm. L. Crawford, former bookkeeper of Atkins & Burgess, of this city, was present. Assignee was there alone. This was about 2 o'clock in afternoon of July 9, on Friday. Sure it was Friday, because I had been expecting him, as this was the day for creditors to show cause why bid should not be accepted, and I had seen him in morning before, now I recollect. Assignee spoke first, and said, Hodgkins bid had been accepted, and he wanted to find him. This was bid for $40,000, handed him 2d July; he made the remark that there were "wigglers in the water," and he wanted to find him; thought I understood what he meant; told him he could find Hodgkins at Crane's office, that it wasn't Hodgkins, but Crane was the man, and I knew it was all right, and suggested to him to go over and see him. He asked me if it was all right, I said it was, that Crane was good. He said he thought so, or he would have required a deposit. Mr. Crawford was present, and heard this conversation. I remember I looked over order of sale, as I supposed it was, and made some objection to the way it was written. Nothing further said about Crane's relation to the bid, that I recollect. Assignee then left, I suppose, to find Crane & Hodgkins; I don't know. This was Friday, 9th July, about 2 P. M. Don't remember any subsequent conversation with assignee in relation to bid, or being present at one; didn't see assignee Monday morning, July 12th.

Cross-Examination, by Mr. Tenney, on behalf of Assignee.

Firm of Miller & Kimball has existed since last May, after petition in bankruptcy against Fox & Howard was filed, I think. At commencement of business, we bought one dredge and two scows of F. B. Gardner; were intending to enlarge our business. Miller put in bid for part of this machinery on 1st July. Several other bids in; Hodgkins put

one in. Before bids were submitted, had an arrangement with Hodgkins, as to his bidding on one part, we on the other. Had no arrangement with him to withdraw our bid; our bid was never withdrawn. Nothing said about letting our bid go down. He put in bid for whole, at suggestion of assignee. There was an understanding of some sort, that we were to have an interest in stuff, but nothing definite. Shouldn't compete for property, provided Hodgkins got it. Nothing said about competition, but we didn't put in any other bid. We had a sort of understanding, if Hodgkins got the property, we should have some sort of an interest. This is what this all sprung from. I wrote a new bid for him; he in all, put in two bids. He only put in $40,000 bid after first bid; that is all. It seems I do recollect something about Hodgkins putting in a sealed bid, and afterwards returning bid still unsealed, and returning it in different shape. Think this was about July 1st; have forgotten about it. He put in his bid, and found assignee would give a little more time; think he wanted to consult Crane, or some one, and went out and came back. I had forgotten about it, but it seems I recollect something of the kind. Don't recollect that we saw and talked with Crane on this subject before 1st July. Crane was away about that time, and Hodgkins did all his business; we may have seen him before; we did not put in any bid after 1st July; don't think any definite arrangement was made as to interest we should have in property if struck off to Hodgkins. It was arranged afterwards, about 9th July, that Hodgkins was to have one-fourth interest and we one-fourth, and Crane the balance; it was not at first; don't know whether it was before or after July 9th; an understanding that we should have interest, but not one-fourth; there was nothing definite; it may have been a one-half; it was left open.

Whatever we got we were to get from Crane—if his bid succeeded, all to have interest. It was 1st July when Hodgkins, Miller and I went to Hancock's office; that is day we put in first bid, and it was next day I told you about conversation; $40,000 bid was put in July 2d, and my impression is

Hodgkins handed it to assignee. I wrote bid. Had no special reason for going to Hancock's office; had sort of interest; wanted to see what was said and done; not for doing any special thing myself. After bid was handed in, don't remember first thing said; he read it once; that lead to conversation about manner and form of bid, and objections to it. The propriety of making some alterations was one of the things discussed; don't know but principal thing. Impression is Crane's name was spoken of when Hodgkins handed bid to him. I wanted Hancock to be satisfied that the operation was not bogus, but *bona fide*, and took the liberty of telling him myself. Don't know as I was first to speak of it, but I spoke of it. Didn't go there specially to tell him; just struck me then I suppose; don't recollect whether he made any answer. Don't know who next spoke of Crane; we were all talking about it. Hancock understood conversation about Crane; couldn't give words, but substance of what I said to Hancock. Said it was a a good straight bid, he needn't be afraid; that Crane of Crane Bros. Manufacturing Co.—I remember I brought that in—was backer, and it was all right. Don't know who next man was who spoke of Crane. Remember Besley was in, and that I told him about it when he was talking to Hancock; Besley stood near desk, don't recollect, but think facing Hancock, as he said to him, "We shall be up there to see that thing is done all right." I must have been facing assignee while standing there; don't remember about our exact position, but I don't talk to a man with my back turned. This conversation with Besley was not in hall, but think we went out together—met in the entrance. Remember of making remark to Besley when we both were standing in front of assignee. Think Hancock was sitting down looking over bid at time. Think Miller, Hodgkins, Besley and myself were standing there. Hodgkins and Miller both spoke about Crane at that time, but don't remember just what was said. They said it to Hancock, who was, I think, sitting at his desk, looking at bid, I think. Impression is, Hancock nodded or assented to remark about Crane; am not sure.

No question about why bid was in Hodgkin's name, when it was really Crane's. Went to court with Miller, Hodgkins, and Hancock, July 1, to hear bids read. Saw them opened and heard them read. Nothing said about Crane's being interested in any of these bids.

Next conversation was on 9th of July (Friday), when Hancock came to my office; it was after dinner, and generally get back about two o'clock; it was about two; don't think it was three — just after dinner — have no means of telling exact time; it was about two; generally return from dinner that time; when he came, he said bid was accepted; wanted to see Hodgkins because there were "wigglers in the water;" thought by "wigglers" he meant some trick about it, something wiggling around we didn't understand; don't know that I thought it meant that Hancock was anxious to close it up for fear somebody would come in and bid for it and get it, but thought there was some trick, and so was anxious it should be closed up, I advised him to go to Crane's office, and told him where it was; Hancock didn't complain about delay in closing up, or express any doubts whether it would be closed; Hancock wanted to know if it was all right; told him same as I told him at office, that it was all right, that Crane was the man, and where his office was, and was anxious he should go and close the thing up. Hancock didn't inquire where Crane was to be found, but where Hodgkins was. Told him Hodgkins could be found at Crane's office; don't think he expressed any doubts or fears about its being closed up, but said something about there being "wigglers in the water." Didn't say anything about closing it up in a hurry, but came in in a hurry, and I thought something was up, so I volunteered this information and assured him it was all right; told him I knew it was all right, because Crane was the "backer," or it was Crane's bid, and I advised him to go right over and see him and have it closed up; he had showed me an order of sale and I had asked explanation of clause in it that I didn't understand; stayed only a few minutes; know it was 9th of July (Friday), the day order was made for sale; was expecting him

in all the while; he had not promised or talked about coming in, but I had talked with him and thought I should hear from him; knew it was Friday also because I went to Crane's office that afternoon about five, to see if he had seen Hancock; Miller and I drove over in buggy at five or six. Remember Saturday morning; think I remained in our office; know Miller went to Crane's office three different times Saturday. Remember Miller and I talked about his going to Milwaukee that night; don't remember any particular duties I did. This talk was towards night. Don't remember what I was doing about two o'clock that day; don't recollect what I had for dinner that day.

Re-Direct Examination, by John S. Cooper, on behalf of Petitioners.

The thought never came up that we should make an arrangement that, in consideration that we wouldn't bid on property, Crane would give us an interest. The firm of Miller & Kimball was not able to take the property and pay for it $40,000, wasn't financially able, and had no idea of bidding on whole property; had no idea of bidding on part of property, more than we bid July 1st. There was a sort of an understanding we had with Hodgkins, before the 9th, that Crane would sell us part of the property, or give us an interest in some way; my impression is we did not have such an arrangement with Crane before the 9th, still I don't know. We had an understanding with Hodgkins before the 9th, but nothing definite; there was a time when we thought we would like to have half interest, but I don't know if that was before or after. No arrangement by which we were to pay part of money to assignee.

Re-Cross-Examination, by Mr. Tenney, on behalf of Assignee.

At the time bid was put in, on 2d of July, nobody told assignee that we were interested in bid.

Re-Direct Examination, by John S. Cooper, Esq., on behalf of Petitioners.

I surely didn't have any interest in the bid; don't know that that was the reason I didn't tell him; it would have been untrue if I had told Hancock I had an interest in the bid. I didn't tell him my actual interests and expectations, presume I didn't think it was necessary.

DEPOSITION OF WILLIAM H. WOODBURY,

SEPTEMBER 21, 1875.

Examination by John S. Cooper, Esq., on behalf of Petitioners.

My name is William H. Woodbury; age, forty-three years; occupation, book-keeper; reside 352 Park Avenue; have been permanently resident here since the spring of 1871. I am bookkeeper for Charles S. Crane; his office is at 37 Canal Street, corner Washington. I look after the books, and selling, and collecting, and so forth, together with looking after the general business; in Mr. Crane's absence acting for him. I have seen Bradford Hancock once; is the same gentleman sitting at your left; I saw him at our office, Mr. Crane's office, on Friday, I think, the 9th of July; was somewhere between 3 and 5 o'clock, to the best of my memory; he came there with Mr. Hodgkins; I think Mr. George Crane and myself were the only persons in the office; Mr. George Crane was in the office, or else in the store back—perhaps in and out during the time the assignee was there. In the front part of the office, we had a glass window or partition perhaps 10 or 12 feet deep, and 25 feet wide; my desk backs up; as I am sitting at my desk, my back is at the south; it is a desk with pigeon holes on one side, and place for books on the other; there is a hole cut through, and back of that there is another desk that faces west; you

sit up to the desk and you face west ; I was sitting at my desk when Mr. Hodgkins came in, and took a seat at this other desk, in a chair setting there, and Mr Hancock at the end of the desk ; sitting there, I could look right through and see them. I think Mr. George Crane was sitting beyond, at Mr. Hancock's left, in the chair there. The first conversation that occurred, first that was said, Hodgkins introduced me to Mr. Hancock as the assignee of Fox & Howard, and said they had got a confirmation of the sale, or an order of sale, whatever they termed it, from the court ; I think Mr. Hancock took a paper from his pocket, and either he commenced to read it, or I do not remember whether he read it or I ; I know Hodgkins had it, and commenced to read it, and he did not read the writing very readily, and handed it over to me, saying, you can read it faster than I can. I sat there and read it through, and read it aloud; in the first part of it said I objected to the reading and phraseology of the first part of it. Says he, "Go on and read it through. That is a mere matter of form," Mr. Hancock said, "read it through to the bottom, and when you come to the closing part of it, that is all satisfactory." There was a clause at the last part of it that satisfied me. Mr. Hancock then said, "There is a good deal of this property scattered round the river or the creek, and I would like to deliver it." Says I, "Mr. Crane is prepared to take it at any time. You can deliver the property, and he is prepared to take it at any time." When they first came in, they inquired for Mr. Crane, I think, and I said he had gone up to Crane Brothers, saying he would be back shortly. After this conversation, they went out. Mr. Hancock and Hodgkins got into a buggy and drove off. Half or three-quarters of an hour, or such a matter, some little time after, Mr. Crane came in.

Q. Wait a minute. Did Mr. Hancock ask you anything about as to whether Crane was responsible for the bid in any way—was there anything said about that?

A. He did. I told him I knew what the bid was before it was sent in, because I had heard Mr. Crane say to Hodgkins

"You bid for forty thousand dollars, and that will fetch the property; nobody will bid any higher than that." That's what I told Hancock. I heard Crane say to Hodgkins to put in a bid for forty thousand dollars, and that would fetch the property.

It was true that I heard Crane say that, to Hodgkins, to make a bid for forty thousand dollars. Hancock made no demand for the money on the bid at that time; his interest seemed to be to deliver the propesty, as the property was scattered, as he said, scattered over the creek, and it was liable to go to waste, by being stolen, and he wanted to get rid of it — wanted it off his hands. Mr. Hancock and Mr. Hodgkins came there in a buggy together, and drove off in the same way; could not say how long they were there; it was while I was reading the paper and doing the talking; I told Hancock that Mr. Crane was prepared to take the property at any time; that was the remark I made, because the matter had been talked over, and we expected the property, and Mr. Crane had said that he was ready to take the property at any time; I do not remember whether Hodgkins said anything to Hancock at that time about my position in the office there, or as to my representing Mr. Crane; Mr. Crane came in very shortly; I should judge it was nearly five o'clock when Mr. Crane came in, or might have been a little before, or a little after, and I told him; I saw Mr. Harry Fox there, at Mr. Crane's office, frequently; he was there nearly every day, before this Friday, July 9; I remember of the bid being put in, and of Hodgkins coming back to show me the draft of a bid; I guess it was a letter-press impression or something of that sort he had put in; that was along the first of July, or such a matter. I could not say whether Harry Fox was about the office before the bid was put in; he was in there, I presume, every day, before the property was awarded, and before the conversation with Hancock and Hodgkins, on Friday, the 9th.

Q. Can you swear positively that this was on Friday, the 9th of July?

A. Yes, sir; yes, sir; positive of it.

Q. There can be no mistake about it?

A. No, sir; none whatever.

I do not know Mr. Carkin by sight; I do not know whether I ever saw him at Crane's office or not; I know Mr. Harry Fox came in there, with a gentleman with him, once or twice; when they came in, they always went in the back room; if Mr. Crane was in the office, they would go right back in the back room, and always have their talk there.

Cross-Examination by Mr. Tenney, on behalf of the Assignee.

I am still in Mr. Crane's employ, as a book-keeper; I have not read over the testimony that has been taken in this case; I have looked at none of it, except an affidavit that I made some little time ago; that is all I ever saw of it; I read that affidavit over to-day; this morning I had a conversation with Mr. Crane in regard to my testimony to be given now, and with Mr. Cooper; I mean with Mr. Charles Crane; never looked at the testimony of either of the other witnesses given in this matter; know nothing of it; I looked at the affidavit this morning and also yesterday; I wanted to look it over to see what it was, and if it agreed with my idea of the matter at the present time.; I found it correct; it was on Friday, the 9th of July, that I saw Mr. Hancock.

Q. How do you know?

A. Well, do you want me to tell you how I know?

Q. Yes!

A. It was the day before I went out to Roselle; I went out to Roselle Saturday morning; I went out on the 9:30 train; I left the office at nine, expecting to be back on Monday morning; I got out there, and I went out to help to fix up their books out there, and worked Saturday and Sunday, and

calculated to get through to come in on the first train Monday morning, but did not get through in time; and thought, as long as I was out there, I would stay and finish it up; thought I could get it done by the afternoon, so as to come in on the afternoon train, but I did not get through in the afternoon, and telegraphed my wife I would not be home till Tuesday, and Tuesday morning I came in; and I was talking of this matter with my wife, and she said the telegraph was in my desk, that I sent to her, telling her I would not be in till Tuesday.

Q. What day was that sent?

A. It was Monday the 12th. I have it here in my pocket, saying I would not be back till Tuesday. I have the telegraph here that I sent. [Produces the paper.] I sent the telegraph Monday. I went out to stay over Sunday; I generally go out Saturday to look over matters, and did not want to be away from our office more than one day —and be away as little as possible, and I thought I would go out Saturday, stay over Sunday, and come in Monday. I recollect going out there Saturday morning. I recollect what I was engaged about Saturday. I saw at Roselle on Saturday, Colonel Hough, Mr. Smith, a young fellow and the bookkeeper; I was with him most of the time, Mr. Walsh. I was helping them; they had not started their books yet for the Illinois Linen Company. I did not make any memoranda here on Friday of the interview with Hancock. I attached particular importance to it at that time, and I attached considerable importance to it, for this matter had been pending some time, and we were expecting that the property would be awarded to Crane, and this day of the confirmation of the sale—we were looking, I was at least, for this confirmation of the sale and expecting it, and when Mr. Hancock and Mr. Hodgkins came there, saying he had a confirmation from the court, of course it was a matter of some little importance, and I was interested in it. I did not suppose at that time that it was any particular importance

whether it was on Friday or Saturday. The only importance was as to the event taking place. It was no consequence to me at any time, whether it was Friday or Saturday. The first that ever came up in the matter—I guess the way I came to say I knew anything about it, was over in the office, when Mr. Crane was saying that Hancock had said he was not over to the office till Saturday, and I said I knew better, and that I had seen him over there once, and that was Friday. And then Mr. Crane wanted to know what I knew about it. I could not tell when it was that I told Mr. Crane this; it was after this matter had commenced in court, I think that was the first Mr. Crane knew anything about it, because I was away there the Monday that the tender was made—that Mr. Crane tried to consummate the sale. There was no railing at the desk. I was sitting behind the desk. They faced towards the centre of the room, and I communicated with Hancock and Hodgkins through the opening in the top of the desk. Hancock sat right at the end of the other desk, in a chair, and Mr. Hodgkins was sitting in front of the desk, and had the pivot chair. When he came in, Hodgkins introduced him, and said, "That is Mr. Hancock, assignee of the estate of Fox & Howard." Mr. Hodgkins wanted to know if Mr. Crane was in, and I told him he had gone out, and then they sat down. The next thing was that one or the other of them said, I think it was Mr. Hodgkins, Mr. Hancock had the order of sale, or confirmation of sale, or whatever he termed it, from the court for the dredge property. Mr. Hancock took that order from his pocket. I do not know whether he commenced to read it; I know Mr. Hodgkins handed it to me. Hodgkins commenced to read it, and said "Here, you read writing faster than I do," and I took it and read it through. After I had read it through, and expressed my satisfaction with it, Mr. Hancock wanted to know if that was Mr. Crane's bid—if he was responsible for it. I told him I knew it was. I could not give word for word what was said, but that was the amount of it; he wanted to know if that was Mr. Crane's bid. I told him it was, be-

cause Mr. Crane told Mr. Hodgkins—I heard him instruct Mr. Hodgkins to make that bid at forty thousand dollars, and he said that would fetch the property. I told Mr. Hancock that . There was within hearing of that conversation, us three; Mr. George W. Crane was, I think, in the office, but he was in the office and back, to and from the store. There was no man there with side whiskers, unless you call a man's whiskers all over his face [indicating Mr. Hodgkins] wearing side whiskers; I did not wear side whiskers at that time. I do not remember anybody else being there, still there might have been. I think Hodgkins was the first one that made a remark in this conversation when they came into the office. Mr. Hancock was the first one that made any remark that called for any statement about Mr. Crane's being interested in the property; he wanted to know if that was Mr. Crane's bid, and if Mr. Crane was responsible for it, and I told him he was; that I knew he was from the fact that I heard Mr. Crane instruct Mr. Hodgkins to make that bid for forty thousand dollars. Hancock replied he would like to commence delivering the property. I do not think there was a word said about money being paid one way or the other. I told him Mr. Crane was ready to take the property at any time. I do not know how long we were engaged in talking there, Mr. Hancock and myself; I was reading this order of sale, and our conversation, which might have been from fifteen to twenty minutes or half an hour, such a matter; could not tell the exact time. We were talking about this matter, and were reading and arguing this matter in the form of the order of sale, or whatever it was, the order from the court. After we got through with our conversation, I think Hancock sat there awhile, waiting for Crane to come in; I think they waited a short time; I do not think they were there over half to three-quarters of an hour, but still they might have been. I thought Mr. Crane had gone up to Crane Brothers — had gone out. They sat there a little while, perhaps half an hour, more or less; after the talk Hancock and Hodgkins might have gone into the back room, and spent some time

there, but I know they did not stay very long, because from the time they come there, perhaps an hour or an hour and a half, Mr. Crane came in, from the time they first came in. I do not think they staid any length of time; still they may have stayed there. I think that the order of sale that was shown to me was left there, and I think I handed it to Mr. Crane when he came in. There is no other clerk or book-keeper in the employment of Crane, that comes and sits at my desk; I recognize that as the man, I think, and he was introduced as Mr. Hancock, the assignee of the estate of Fox & Howard, and that, of course, impressed me rather more. There was a man there, Kay, a solicitor, and he had bushy hair; he might have been in there and out again a few minutes; he had sharp features. I do not know where Kay is. I do not think Kay had any conversation with Hancock; if there had been any, I would have seen it or heard it. Mr. Kay was merely a solicitor and collector; he had nothing to do with the office, unless it might have been at times when we were all out, and left him there a little while. I do not know what has become of Kay; it might have been two or three weeks since I saw him; I was thinking I could fix the date, but I cannot; he is not in the employ of Mr. Crane now. I gave this paper that Mr. Hancock gave to me, to Mr. Crane; I handed it to him. I think I have been down to Roselle three times on Saturdays, and the only times I have been there, I think I went there on Saturday, and stayed over Sunday each time.

Q. Now, havn't you got some of the other occasions mixed up with this?

A. No, sir.

Q. Well, I give it up.

A. No, sir, there is no mixture whatever. I was out there again, the sixth, no, the seventh of July, and paid off.

By Mr. Cooper. On the seventh of July, or August?

A. August, August, I remember that very distinctly.

Re-Direct Examination, by John S. Cooper, Esq., on behalf of Petitioner.

I saw at Roselle, Colonel Hough and his wife; I slept at Colonel Hough's house, I saw Mr. Smith, and this young man, this young Mr. Wallis, that I was breaking in for bookkeeper; I had to assist him in starting the books. I went out on the Chicago & Pacific Railroad. The train leaves the depot at 9:30. I left the office that morning at nine o'clock, about nine, and I walked up to the depot, corner Chicago Avenue and Larabee street, and took some little time. I do not think I saw Hodgkins Saturday morning, before I left the office; still, I might have seen him; I do not remember; I think the order of sale that was left with me was a certified copy; I think there was some printing on it.

By Mr. Tenney. We admit delivering a paper there sometime, but it was not Friday.

By Mr. Cooper. We want to introduce it in evidence here, because we want to identify it, the certified copy of sale, dated July 9, 1875.

Q. This order was left with you, I understand?

A. Yes.

Q. For Mr. Crane?

A. I handed it to Mr. Crane when he came in.

Q. I will ask you, if there is no objection made, and you need not answer the question, until counsel say, what you told Mr. Crane, and what Mr. Crane told you when he came in?

Objected to.

By Mr. Tenney. Did Hancock leave that paper with you, or did Hodgkins hand it to you?

A. Mr. Hodgkins gave me the paper, and took it from Mr. Hancock, or Mr. Hancock handed it to him, and he handed it to me, through the pigeon hole, to read.

By Mr. Cooper. I do not think Mr. Hancock said anything to me about keeping the paper, or what I should do with it. He left it there, being Mr. Crane's place of business, as I understood, and to notify him that the sale had been confirmed to him, and left it for Mr. Crane, as a notice to him that the sale had been made to him. I think I am sure that it was left with me, because I handed it to Mr. Crane, when he came in, shortly after. I had a conversation with Mr. Crane after he came in, the nature of which, fixed this previous interview with Hodgkins and Hancock more definitely on my mind, as to the time when it was, and what it was.

Re-Cross-Examination by Mr. Tenney, on behalf of Assignee.

I could not fix the time exactly in the day, when Hancock and Hodgkins were there; I should think, between three and five o'clock; I am sure it was later than two; I do not think I could fix the exact time, from the nature of the things I was engaged in; I do not think I had been to the bank that day; I think it was after banking hours. I will tell you now, why I fix the time. Mr. Crane was out. After they went away, perhaps, half or three-quarters of an hour, Mr. Crane came in, and I think it was when Mr. Crane came in, not far from five o'clock, somewhere about that time, because it was nearly closing up time. I know I sat there talking with Mr. Crane about going out to Roselle; and the next morning I know I went out there, and I did not get back until Tuesday; and when I got back, Mr. Crane said that the property had been sold to some one else, or some one else got possession of it.

Re-Direct Examination, by John S. Cooper, Esq., on behalf of Petitioners.

Q. Now I will ask you what the conversation between

you and Mr. Crane was, by which, or by reason of which you fix this date, the time of the interview between Hancock and Hodgkins and yourself later than three o'clock?

Objected to.

A. Well, when he came in I handed him the paper, and says I, "Mr. Hancock has been in here, and is anxious to deliver this property." Says he, "You go right out and tell him to deliver it now." Says I, "I don't know where his office is." Says he, "You go down and tell him to deliver it now; I am ready to take it now." Says I, "I don't know where his office is; and, besides, it is so late now I would not find him now, probably; those fellows get out of their offices before this time of night, and he would be gone before I would find him;" that is my reason for fixing it at a late hour. Mr. Crane was in. I remember his telling me the second time to go and "tell him to deliver this property, and say I will pay for it now;" and then I says, "There is no use in it, for I don't know where his office is, in the first place, and if I did, he would be gone; those fellows——" I remember I made the remark "those fellows don't stay in their offices as late as this."

It is admitted that the certified copy left at Mr. Crane's office was got from the clerk's office on the 9th of July.

DEPOSITION OF DUNCAN D. McBEAN,

SEPTEMBER 18, 1875.

Duncan D. McBean, of the city of Chicago, county of Cook, state of Illinois, being first duly sworn, cautioned and examined in the above entitled matter, at the time and place above mentioned, on his oath, says:

Examination, by Mr. Crane, on behalf of Petitioners.

Resided in Chicago last eight or nine years, off and on.

Some acquainted with Harry Fox; know Bradford Hancock when I see him; met Hancock about the time he was appointed provisional assignee; don't remember when and where. Am a creditor of the estate of Fox & Howard; have had two or three conversations with Hancock in regard to sale of personal property of Fox & Howard; first conversation was, I think, the day bids were put in—the first bids; conversation was in his office in Major Block; it was about machinery, and finding out what they intended to do; I had called for the purpose of ascertaining what the assignee had done, or proposed to do; it was just after bids were put in; went in and got copy of bids, I remember now; I got copy of all bids; do not recollect of seeing $40,000 bid at that time; it was at the time of the Hale & Ayer bid, and bids opened by Judge Blodgett, the first conversation; the second was that same afternoon.

Second conversation took place in the office of some lawyers, across the road from Major Block; in Tenney's office, I think. He was making up report there for judge; asked him how he was going to make up report; if he was going to accept Hale & Ayer's bid; he gave me to understand he was not, but was going to accept Hodgkins' bid, Miller & Kimball's bid, and I believe some other. Then, for the first time, I learned Crane was backing Hodgkins. Hancock gave me to understand that Crane was backing Hodgkins; I had an idea Miller & Kimball were backing up his bid, but Hancock gave me to understand it was Crane Bros. Don't remember that I told Hancock I supposed Miller & Kimball were backing up bid; he volunteered the information. Next saw him at the head of one of the landings in this building, I think second or third, not positive which, on the forenoon of next day; had a conversation with him; don't know as I can give conversation, word for word, can give it as I recollect it. Met Hancock at head of stairs, asked him if he was bringing in report; said he was; asked him if he was going to report in favor of dividing machinery up; said he was selling it all in one bulk, and had Ayer

& Hale's bid, and then said, "I have got a better bid now, a bid of $40,000, and a good one." I asked, "Whose is it?" and he pulled out bid; remember it was in handwriting of R. Kimball; says I, "Is it a good bid?" and he says, "It is backed up by the Crane Brothers." That is the first I heard of the $40,000 bid. Said he had a good bid for $40,000, signed by Hodgkins, as the other was, and backed by Crane Brothers; at the same time he pulled it out of his pocket and showed it to me, and said it was a bid backed up by Crane Brothers; don't know as I would know the paper if I saw it again; don't remember what further conversation there was; thought he was doing very well. Knew nothing then of the financial standing of Crane, of my own knowledge, did by general report; by general report I understood they were perfectly good; don't remember that I intimated that to assignee. Don't remember any other conversation with him in regard to the $40,000 bid; that conversation occurred in this building.

Cross-Examination, by Mr. Tenney, on behalf of Assignee.

I was interested, because I knew something of that business; thought machinery going very low, and sooner that let it go at Ayer & Hale's bid, I would raise money and take it myself. Did not put in any bid at any time. Was not interested in any bid put in; have been in contracting business; had no plan of becoming interested in property; was interested as a creditor, and thought the machinery was sacrificed, and wanted to have it bring as much as possible. Went to Tenney's office to find out how he was going to make out report. Did not want Hale & Ayer to get property, because I thought they were working in interest of Fox & Howard. They, (F. & H.,) had already taken my money, and I didn't care that they should get property so cheap. Their bid was not more than others, and I did not know the assignee—whether he would do what was right; I wanted to keep watch on him. Hancock was first man to tell me Hodgkins was backed up by Crane Bros. There was a gentleman present there. Don't remember number of

room; it was not the room entered from hall, but the next room; desk in front of side of window. Not certain that Hancock was sitting at desk. Staid there five or ten minutes. Asked him how he was going to make report; if he was going to report in favor of Hale & Ayer, and he gave me to understand he was to report in favor of Hodgkins, Miller & Kimball, and some others, when he told me Hodgkins was backed by Crane Bros. Know Crane Bros., and their responsibility, by reputation; never had dealings with them. This was satisfactory to me; had an idea he was doing right—was trying to get the most money out of the property he could. Don't remember of expressing any opinion of Crane Bros. there. Didn't ask Hancock who backed up bid; he volunteered to tell me. Am positive Hancock understood it was Crane Bros. backing up Hodgkins bid; he gave me that idea first; he certainly gave me to understand that Crane Bros. were backing that bid. Hancock didn't tell me in that interview that Hodgkins had gone back on his bid; he told me that Hodgkins had been in some minutes before I came, with some person with him, but what further than that I don't know. Don't think he told me he had withdrawn bid. Don't know that I told him I would take property sooner than let it go at less than that—some part of it—one dredge, I believe. Hadn't seen Ayer & Hale, or Hodgkins, a little before going there. Didn't know Hale or Ayer at that time. Knew them by reputation, not by sight. Hancock told me, also, that either Hale or Ayer were in with Hodgkins; wanted to see if it couldn't be worked that way, so that Hale & Ayer could take it at his bid. Hancock did not give me the idea that Hodgkins had been in and withdrew his bid. Said I would take property sooner than see it go at less figure. Don't remember saying, since Hodgkins had withdrawn his bid, I would take it at his bid. Came to speak about bidding by Hodgkins trying to see if he couldn't withdraw his bid and on account of Hale & Ayer taking it. Hancock didn't tell me Hodgkins had withdrawn his bid, but I understood he had tried to do so with Hancock, but that he didn't withdraw his bid, but understood he talked with Hancock about it. Don't think it strange that when I understood Hodgkins was going

to withdraw bid Hancock should then tell me the Crane Bros. were backing it up, and it was all right, because his actions afterwards go to prove it clearer, because he recommended sale to Hodgkins, and if he was not good he certainly would not have done that; he must have examined into it. Remember Hancock,s telling me Hodgkins had been in there with Ayer or Hale to see if they couldn't work it so as to take property on Hale & Ayer's bid, and I didn't want that done, and Hancock didn't. Think Hancock said he would report bids as they were, and if Hodgkins didn't take property, think likely I said I would.

The other conversation was when I heard about the $40,000 bid the next Monday; met him here on the stairs, in the forenoon; one of the firm of Monroe, Bisbee & Ball with him; don't remember the day; understood that it was at time $40,000, bid was received and confirmed; understood he had just got bid a few minutes before; it was in forenoon. I understood Hancock was going in there to put in report; he had made out another bid; that is the first time I knew of the better bid. Forget just what my business there was that morning, but felt uneasy about report, and was on the watch as close as possible. It was satisfactory when he told me Hodgkins had bid $40,000 for property; had seen Hodgkins the day before; I was satisfied when he added that Crane was backing it up. Don't remember of expressing any doubts or dissatisfaction as to solvency of Hodgkins. Told me of Crane Bros., I being a creditor; don't remember of saying anything that led him to make the remark for purpose of satisfying me; he wanted to make it appear he was doing all he could for creditors, and I suppose he told me, knowing I was a creditor. Don't know as a sale to Hodgkins for $40,000 would be as good as a sale to Crane for $40,000; talked to him at head of stairs five or ten minutes; understood it was Mr. Ball who was present; think likely he heard conversation; stood where he could hear what took place; he was listening to conversation; remembered telling him to stand away from railing, there was a little danger.

Re-Direct Examination, by John S. Cooper, on behalf of the Petitioners.

Had a suspicion at that time that these proceedings were not working in interest of creditors of Fox & Howard, and do still; I was watching to see what they were doing, and see they didn't let it go for nothing; only know Hodgkins was in Tenney's office with Hale or Ayer, from what Hancock told me; havn't paid much attention to it since then; saw they were too deep for me—the assignee and his lawyers. Remember of Harry Fox coming to me on Dearborn street, on morning after sale to Conro & Carkin, and wanted to know what I thought of sale; told him I thought it was a singular proceeding to sell property so quick and not have any one know anything about it; he said it was all right; told him I would have to inquire into it before I would believe it. Believe I was in company with Mr. Ball on the morning of 2d of July; believe we came into building together; forget what our business was there; he is not my attorney; it was when we were going out that we met Hancock. By saying assignee and lawyers were too deep for me, I mean they told different stories, so that I couldn't place any reliance upon them. I understood from Hancock that he reported favorably on Hodgkins' first bid the next day; don't remember that Hancock told me in so many words that Hodgkins was in there with Hale or Ayer for purpose of withdrawing bid and turning over property to them, but that they were in there to see what they could do about it; that is what he said; won't say exactly as to wording, but that is as I remember it.

Re-Cross-Examination, by Mr. Tenney, on behalf of Assignee.

Am a creditor of this estate; my claim is $2,200 or $2,300. Will tell you reason I thought proceedings crooked. First I understood sale to Crane Bros. was good sale for creditors, and they were satisfied; afterwards understood assignee had a right to get higher price if he could; that he was offered $500 more, and then without giving any other person a chance, shipped

right out and done it up in a short time; that is sufficient for me to see. I do not understand a larger bid was got; I understand, besides, what Hodgkins was to get on his bid, they got patterns, etc. I am telling you as I understand it. I understand that property was afterwards sold for $40,500; but it was not a better sale if these patterns and things were added. If they were not added, why not give a chance to raise it again; if he had a right to request other bids, what was his hurry in selling this thing right off?

I can give a reason why I think the sale was not in good faith. I understand that Monday morning, when he accepted $40,500 bid, Hodgkins offered him $500 more if he would allow him two hours more to get it in. I have this as I understood it; believe it because Hodgkins told me so. Hodgkins told me when they went in and proffered money, assignee told him they had raised on this, he had accepted it, and if they wanted to raise it there was time enough yet, the papers were not made out; and then Hodgkins said he would raise it $500 if he would give time, and would pay in two hours, and then went out to find Crane, and when he returned papers were being transferred to Conro & Carkin. I believed this story; if it should turn out differently, I would think differently of assignee.

DEPOSITION OF ARCHIE J. McBEAN,

SEPTEMBER 21, 1875.

My name is Archie J. McBean; residence, Chicago; occupation, contractor; thirty-nine years old. I am connected with the firm of Moss, Chambers & McBean; I am indirectly interested in the estate of Fox and Howard; I represent an interest and claim of my father; I have met Mr. Hancock before; I am not much acquainted with him, but I know that I have met him in Major Block—in an office in Major Block; in his

office; supposed to be his office; I had a conversation with him there in regard to the sale of the stock of Fox & Howard; I do not know whether I had more than one, or not; but I had one conversation with him; that was on Saturday, previous to the sale made to the other parties, Conro & Carkin, which was Saturday, July the 10th. I was going along on LaSalle street, but with regard to the man I went with, I cannot say. I do not remember whether it was Bessel, or the other man, Estie; I do not know which man it was; cannot be confident; but they asked me to go in with them and see how the sale was progressing with Hodgkins, and we asked Mr. Hancock how the sale was progressing—if they had come to time, or not. When I first put the question he did not make any direct answer: and then I expressed an opinion that this bid of Hodgkins was a straw bid, and that I did not believe they intended to come to time. His answer was, that he thought so, too, a few moments ago, but now he thought it was all right; he knew the thing was all right, and he had given them till Monday morning to comply with the terms of the sale of the court; something to that account. I do not remember whether the name of Charles S. Crane, and Crane Brothers was used during the conversation. He had given them until Monday morning, he said: since a few minutes ago I am convinced it's all right. He gave us to understand we might rest satisfied that the thing was going through; he had given him until Monday morning to close it; it was about three o'clock that this conversation occurred.

Cross-Examination, by Mr. Tenney.

I could not say when I first heard that this bid had been made by Mr. Hodgkins; it was a day or two previous to that; I could not say how long; could not say that I had given any attention to it, but came to the conclusion it was a straw bid, because I had seen Mr. Miller, and he told me they were going into it; I expressed my doubts at the time in regard to it; at that time I expressed my doubts; before Mr. Hancock expressed my doubts; I expressed myself at that time to who-

ever it was, Estey or Bessell—I think to both of them. After that we did not think that Mr. Hodgkins would comply with the proposition, and I suppose I would not have expressed myself that way unless I felt so at the time. I did not go in there to give Mr. Hancock my views to that effect; I think I should not have gone up there at all if I had not been asked in by one of the parties, whichever it was, and I cannot remember who it was. It was not considerably later than I have stated that the interview took place; it was not just before six; it was about three o clock; I am not clear enough on that to answer whether Hancock gave any reason for saying that he had concluded that it was a *bona fide* bid—whether he mentioned any fact that had made him think that way. He said something about Mr. Hodgkins, but I cannot swear positively what it was.

Re-Direct Examination, by John S. Cooper, on behalf of the Petitioners.

I do not believe I left the assignee with my hopes and expectations of this sale to Hodgkins being carried out, and the money paid, changed by what he told me, because of the way they had acted all the way through. I felt as though if I had made such a proposition, I would come up to the mark at the time. When I do business I do it right straight along. When I make a proposition I go right to fulfilling it. Having that reason in my mind, I felt that way. It would not have changed my mind if I had known that Mr. Crane or Crane Brothers were backing the bid, and were responsible for it, unless he had given me good reasons. If I had known that the assignee had arranged with them to turn over the property on Monday morning, and receive the money on account, and Mr. Crane had told me that the money was ready for him, at any time, I should in that case; but the way I felt at the time I would not have felt different, and after being there, I am confident I did not, because Mr. Estey and I had a conversation afterwards about it, but what it was I do not remember. Mr. Estey will probably remember. Still I will say this, that the assignee was trying to make us confi-

dent that the thing was going through all right. I say that he tried to impress us with his belief of the thing, that it was all right, but it did not make much impression on me though.

Re-Cross-Examination, by Mr. Tenney.

I think I did not tell Mr. Estey when we got through, that I was satisfied from what I had seen of the assignee and his looks, that the whole thing had gone up. Mr. Estey and I had a conversation on the street, right in front of the Montreal Bank, but I do not think there was any such conversation as that, in regard to the assignee.

DEPOSITION OF WILLIAM L. CRAWFORD,

SEPTEMBER 18, 1875.

Examination of Edward Crane, Esq., on behalf of Petitioner.

Reside at Rogers Park, Illinois. Have been there about two years. Resided in the vicinity of Chicago pretty nearly seven years. Am book-keeper for C. Mason & Company at present. Was in the city of Chicago on Friday, the 9th of July last. Was not in the city all day. Went to Hyde Park on the noon train, and came back about 1 o'clock. Think I was in Kimball & Miller's office at 2 o'clock, on Friday, July 9, 1875. Am not acquainted with Bradford Hancock, but have seen him ; think I saw him at Miller & Kimball's office that day the first time. This is the gentleman that I saw there — indicating Mr. Hancock. I heard Mr. Hancock and Kimball converse together ; Mr. Hancock had a paper in his hand, and he showed it to Mr. Kimball, and Mr. Kimball took it and read it and passed it back to him. I understood it was an order of sale ; I understood that from the conversation between Hancock and Kimball ; I heard parts of the conversation between them. Mr. Hancock said that he wanted the

money, and that there was wigglers in the water, and Mr. Kimball referred him to Mr. Crane — told him he had better go and see Mr. Crane. He took the paper and left the office; heard Mr. Kimball tell him that.

Cross-Examination, by Mr. Stiles, on behalf of the Assignee.

I am using my own language in describing the interview. I cannot tell exactly what it was that Kimball said; I can tell you the substance, that is all. Hancock did not say they had better raise the money; he said he wanted the money — that was the substance of it; said he wanted the money. He addressed that to Mr. Kimball. Hancock said in substance, "here is an order for that stuff, and I want that money." I don't know as he said that stuff; that was the meaning of it. I cannot tell what he said in the exact words, I can only give you the substance of the conversation, as I inferred it. I don't know what Hancock first said; I saw him come into the office with the paper. I don't know what he said the first time I heard him speak; he might have asked if it was Mr. Kimball for all I know, and he might have asked him to take a drink for all I know. I think the first question he asked was, was Mr. Hodgkins there; something about Hodgkins. Mr. Hodgkins said that to Mr. Kimball; don't know what Mr. Kimball said in reply; don't know what Hancock next said; could not tell you what Kimball next said. I have told you all about it. I did not take down this conversation in short-hand.

Q. Now don't try to be too smart; try to answer the question?

A. I have answered. I have given the substance the best I can; I do remember anything that Hancock said on that occasion.

Q. Well, what?

A. He says, "I want the money. There are wigglers in

the water ;" said that to Mr. Kimball. Mr. Kimball then told him he better go and see Mr. Crane. I don't know what Hancock said in reply ; that was about all I heard.

Re-Direct Examination, by John S. Cooper, Esq., on behalf of Petitioners.

In reply to Mr. Hancock's statement that he wanted money, and that there was wigglers in the water, Kimball referred him to Mr. Crane; I don't know exactly what he said in connection with that; I do not remember what; he went out soon after that, with the paper in his hand; I am not certain he, Kimball, told him, Hancock, where Mr. Crane's office was or not; I don't know that I heard Hancock inquire whether Hodgkins was good; might have heard him say so; I did not listen to the conversation all the time; I got scraps of it, you know; I sat there and was not listening all the time.

Q. Do you remember definitely what day of the week this was?

A. On Friday.

Q. What day of the month?

A. Well, I don't know exactly what day of the month, but I know it was the Friday before the sale of the property of Fox & Howard, because I was here Monday morning, at work in this building, and Mr. Hodgkins came down and told me Conro, Carkin & Company had received the property.

Re-Cross-Examination, by Mr. Stiles.

Mr. Kimball and I were sitting about as near together as this, indicating a chair near by, when Mr. Hancock was there. I did not pay attention to all that was said; I do not know that I was reading; I might have had a paper in my hand; the reason I come to go there, I was acquainted with Mr. Kimball, and just happened in there when I was passing from the Central Depot to the place where I was employed. Hancock

stepped right up to Mr. Kimball and handed him the paper; they passed off a little ways before Mr. Hancock went off.

Re-Direct Examination, by Mr. Crane, on behalf of the Petitioners.

I don't know that there was anything said by the assignee or Mr. Kimball, about depositing money on account of this matter; there might have been; not that I heard; there might have been something said; I did not hear all the conversation; I was not listening.

DEPOSITION OF JOSEPH E. MOSS,

SEPTEMBER 21, A. D. 1875.

Joseph E. Moss, of the city of Chicago, county of Cook, and State of Illinois, being first duly sworn, cautioned and examined, in the above entitled matter, at the time and place before mentioned, on his oath says:

Examination, by John S. Cooper, on Behalf of Petitioners.

Have lived in Chicago about twenty-one years. Am a contractor and builder; have done nothing this summer. Am indirectly interested in Fox & Howard's estate; wife and sister had some money and asked me to use it in this way; they are creditors of the estate of Fox & Howard. Only know Bradford Hancock by reputation; was introduced to him one day in his office; should think it was about four weeks ago, after sale to Conro & Carkin. McBean's father asked me if I had ever seen the assignee; told him, no; asked me to go with him there; said I would. The object of the visit was to obtain schedule of assets—the condition of the estate. Had a conversation with assignee regarding sale, then; this was after suit had been in the papers that they were going to disturb the sale. Asked him if they were going to give him any

trouble; he said, no; he went on to say he had given them time till Monday, at 11; that they had not come forward according to agreement and he had sold it to other parties. That was the sum and substance of what he said. Gave me to understand he had given this time to the Crane Brothers. Can't recollect the words used, or how I came to understand it so, but that is the impression I got; he used the name of Crane Brothers; have a distinct recollection of that; he identified Crane Brothers as backers of $40,000 bid as principals. This conversation was in Hancock's office.

Cross-Examination, by Mr. Tenney, on Behalf of Assignee.

Recollect of his saying he had given time till 11, mentioning a definite time; I recollect very distinctly he told me 11 o'clock. Mr. Hancock, McBean, and another gentleman and myself were present in the office when he told me; my impression is he said he had given them until 11 before coming into court; I understood him to say he had agreed Saturday to give them until 11 o'clock; I got the impression that he had given them until 11 o'clock and had waited until nearly 12 before coming into court. The way I got it in my mind was that he gave them till 11 o'clock, and as they had not come forward with the money, it was his duty to take the first bid that offered for certainty—something like that; of course I couldn't say the particular words. This was shortly after commencement of these proceedings to disturb the sale. That is near enough.

DEPOSITION OF BRADFORD HANCOCK,

SEPTEMBER 17, 1875.

Examination by John S. Cooper, Esq., on behalf of Petitioner.

I live in Chicago, at 368 Ohio street. My occupation is receiver and assignee in bankruptcy, lately. Have been in

Chicago a little over two years. I was sheriff of Dane county, at Madison, Wisconsin, before I came here. I was sheriff one term, and under sheriff one term. I was in the war a little over three years; went in as captain and came out as colonel. I was commander of a regiment and a company. I know Harry Fox. I think I never saw him but twice until I was appointed provisional assignee in this matter. I saw him once or twice in Madison, Wisconsin. I do not recollect of ever seeing him here in Chicago until I was introduced to him after I was appointed provisional assignee. He resides on the corner of Indiana and Pine, a couple of blocks from where I reside. Since I have been provisional assignee I have neither been intimate with him or otherwise. I called at his house twice; I called at his house day before yesterday; I was never in his house but once; he never was in my house that I know of; he has been at my office probably may be altogether a dozen times, perhaps not as much. I never knew anything about being a provisional assignee until after I was appointed; I think the first notice I got was from the court. Don't think any one spoke to me about it. My impression is the first notice about it was the notice I got from the court to call at his office. I think the appointment was made that day. I recollect my whereabouts on Saturday, July 10th; (referring to a memorandum) — from 6 o'clock in the evening of Saturday, July 10th, to bed-time, I was taking my supper at the restaurant at the Tremont house; I went from there to Rice's livery stable to see if a horse that I had directed to be brought in from Maywood was there; I was next day out to Maywood; I think I spent the evening there until bed-time, until I went to the house. I think that is my best recollection of the matter. I did not see Harry Fox or Willard S. Carkin that evening. The next day, Sunday, July 11th, I was at Maywood all day. Went there early in the morning, probably about eight o'clock. Milo Inglis went with me. I saw Anson Fox that Saturday night at my office, about six o'clock I should think, or a little later. It was in the afternoon or evening before I left my office. Sometime in the afternoon or evening before I left the office. I did not see him after I left the office. I

think it was about six o'clock when I saw him; he called there and found me there. We had some conversation about the property. Anson Fox was looking after it, had charge of it. Something was said between me and Anson Fox in relation to the sale of the property. I supposed he was a brother of Harry Fox. I asked Anson Fox if he could find a buyer; if he could find one, as the sale to Crane and Hodgkins depended on the organization of a company; I don't know if I used the words "if he could find"; if he could or we could; but that was the substance of what the conversation was. I did not see Harry or Anson Fox or Carkin on Sunday, July 11th, before I left for Maywood. Went out to Maywood to look after a livery stable out there, of which I had been appointed provisional assignee. I saw Harry Fox and Mr. Carkin that evening, after I returned from Maywood, at Mr. Fox's house, about seven o'clock, I think. Mr. Carkin had been to the stable, I learned, inquired for me, and left word for me to call at his house when I came home; either Carkin or Mr. Fox, the livery man told me. I would not say whether it was Harry Fox or Mr. Carkin had been there to see me on Sunday; perhaps both of them; I don't know. I understood, since then, that Carkin boards at Harry Fox's; I did not know it. Did not find any one at Fox's house, but the lady of the house; no other gentleman. The subject of the conversation there was in relation to the purchase and sale of the Fox & Howard property. I think I told them (Fox and Carkin) that I had a letter from Mr. Crane; that Miller and Hodgkins had gone to see Mr. Conro. I do not think I told them, or either of them, that on the evening previous Charles S. Crane had told me that he was going to furnish part of the money on Hodgkins' bid. I do not think I stated to either of them that Mr. Crane had promised to pay part of the purchase money and deposit on account Monday morning.

Q. Now, why didn't you?

A. My conversation with them was very short, and related particularly to the amount they would give for this property.

Q. Why didn't you state to them that in the interview between you and Mr. Crane, held the previous evening, Mr. Crane had agreed to furnish part of the purchase money Monday, make a deposit on account?

A. He had not agreed to furnish it; he had simply said he would see I had a deposit.

Q. Well, why did you not state that to these gentlemen?

A. Well, I don't know that there was any particular reason.

Q. Can you swear positively that you did not?

A. I don't think I did.

Q. Why are you so confident that you did not?

A. Well, it don't occur to me that I did, in the conversation that I had.

Q. Is there any reason why you think you did not?

A. No, there is no reason why I think I did.

The bid of Hodgkins' was canvassed between us three there only this far, that I told them that Mr. Crane had said to me that Hodgkins and Miller had gone to Milwaukee, and I considered the sale of this property depended on the organization of a company; and Mr. Fox said that Mr. Conro would not put in any money, consequently that the company could not be organized. I did not know on Sunday anything in a general way about Charles S. Crane's financial responsibility; I had never been told about it; I never knew until I went over with Mr. Hodgkins on Saturday, what his concern was. On Sunday, at the time of the interview at Fox's house, I knew nothing about Charles S. Crane's financial responsibility, except what I have told, what Mr. Hodgkins told me Saturday over in the store; I supposed Mr. Crane was one of the firm of Crane Manufacturing Company; my impression was that

the financial responsibility of that concern was good, at that time, and is now.

Q. Now, sir, you say in your answer, that Mr. Crane promised to give you a deposit first thing Monday morning, on account of the bid of Hodgkins, and believing him to be financially responsible, I will ask you why, in that conversation which you say you had, about a new sale and a resale of this property, you did not mention to Mr. Fox and Mr. Carkin, or both of them, this conversation that you had with Mr. Crane, and his promise to make a deposit on account of this purchase?

A. He did not promise to make a deposit; he promised to see I had one.

Q. Why didn't you mention about that?

A. I don't know that there is any particular reason why I did or did not; there don't now occur to me any particular reason why I did or did not; my impression is I did not say anything about it.

Q. Can you swear to it for a positive fact that you did not?

A. No, sir; I did not.

I was there about ten minutes; possibly not so long; I did not make any appointment with these gentlemen when I left for another meeting; I was not there down below longer; come to think about it, this conversation up stairs in the parlor, the conversation above lasted about ten minutes; I went into the basement and took a lunch there; when I made that answer I was thinking particularly of the conversation; I just got in from Maywood, and they were just sitting down to lunch, there, and asked if I would not join, and I did; did not say a word about this matter at the table, until we went up stairs to the parlor, and was there, as I say, probably five or ten minutes. Mrs. Fox and another lady were present at the

table; I don't know who it was. I do not think Crane's name was mentioned during the conversation up stairs, except only as I stated, that Mr. Crane had informed me Mr. Hodgkins and Mr. Miller had gone to Milwaukee to see Mr. Conro, and see how much he would put in. Mr. Fox then said that Mr. Conro would not put in anything; the reason why was, he, Fox, would not go into that company; Mr. Conro would not put in this money for Mr. Fox, into this company, because he himself would not go into that company. I don't know that he said why he would not go into it, unless it was on account of the numbers; my impression is that it was on account of so many being in it. My understanding of the matter was that Mr. Conro's money was for the benefit of Mr. Fox; I don't know it was stated that way, but I got some impression of that kind. Mr. Carkin told me he understood that the property was for sale; I told him a higher bid was in order; said he would give forty thousand five hundred dollars for it. I told him if he would make me a written bid for forty thousand five hundred dollars, deposit a check for fifteen thousand dollars, and take the property where it lay, subject to the custodian's fee, whatever it was, I would submit the matter to the court in the morning. He said he would see; he did not say who; he would see; did not give me any definite answer; he said he would see. I left him with the understanding and impression that if he concluded to buy it, that way, he would come around with a bid, as talked; if he did not, he would not. I saw Mr. Carkin Monday morning, I guess, about a quarter to ten; I saw him at my office; I had not seen Anson Fox or Harry Fox before that time that morning. Mr. Carkin presented me this paper, (witness shown the bid of Conro & Carkin, dated July 12, 1875, and addressed to Bradford Hancock, accompanying petition filed July 12, 1875,) I don't know in whose handwriting it is; the handwriting of the petition to which this paper is attached, is in O. B. Abercrombie's hand writing; I guess Mr. Carkin remained in my office but a few minutes. When he left I went up to Judge Blodgett's office from my own office; I got to Judge Blodgett's office a little before ten o'clock—perhaps about ten; that was the first time I had been

to his office that morning; I did not have this petition with me at that time; think I went from the Judge's office to my office. This petition filed by me July 12, to vacate the sale to Hodgkins and others, and sale to Conro and Carkin, was drawn between ten and eleven o'clock; Mr. Abercrombie drew it at my instance; I think I went to his office after I had been to the Judge's, in the morning; I think I did not go to Mr. Abercrombie's office before I returned to my own office from the the Judge's; probably talked to the Judge about five minutes. I do not recollect how long I remained in my office after I returned from the Judge's; I was in my own office, and the office of Tenney, Flower & Abercrombie, until eleven o'clock; I think I went to their office after I was to the court, and after that the petition was drawn. I think I was in their office a portion of the time, at least, whilst the petition was being drawn; I took it from their office and went from there to my office; was a few minutes past eleven when I got the petition from their office; Mr. Abercrombie drew up two petitions, that I think is the second one; probably fifteen minutes it took him to draw the petitions.

The first petition was about the same length as the second; I judge about the same thing; the reason I did not use the first one was, that he had not drawn it exactly as I wanted it, or as it suited him, and he drew a new one; I do not know now exactly what the reason was. I do not know why the petition is not sworn to; I supposed it was; it was not at the Judge's suggestion, or by his direction, that the petition was drawn; he said I need not draw any; that if Hodgkins had not paid for the property at that time, to sell it to somebody else. I went back with the petition to Judge Blodgett's, that was the second time I had been to see him; the first interview was when I went to him to know whether he would set aside the sale to Hodgkins and make a new sale; I think the Judge read the petition; the petition was filed about ten minutes past eleven; I think the petition and the order under it were presented to the court at the same time; I think Mr. Abercrombie drew the order, (examining,) Abercrombie drew the order. The petition filed July 12th,

is about three pages and a half in length, and the first petition was about the same length; and there is one and a half pages of the order for the setting aside the sale and making a re-sale. I think the draft of the order, and the petition were handed together to Judge Blodgett, also two certified checks, one of $15,500, and one of $25,000; they were all presented to the court at the same time. I left word at my office that I was going over to Judge Blodgett's office; I think then it was eleven o'clock, or a few minutes past; and I talked with Skinner, and he said it was half past ten when we left the yard, so it must have been after eleven o'clock when I got there, and I met him right at the door of my office; so I concluded it must be a little after eleven. He says he can come from the north yard down here in less than an hour. I received the first check when I went to see the court in the morning, with that bid, about a quarter to ten, I should think; I received it from Mr. Carkin; I received the second check over in the office of Tenney, Flowers & Abercrombie, when this petition was drawn up; Mr. Carkin brought it there. I filed this petition and the order in the clerk's office myself, personally; I took them to the clerk to have them entered; I went back from there to my office; there I met Mr. Hodgkins and Mr. Skinner; Mr. Webster was in the office, and Mr. Thomas I think, when I got back. I do not recollect whether I did any business that morning with anyone, or for anyone other than this matter, from the time Mr. Carkin first came there in the office until I finally got the order entered and returned to the office, or found Mr. Hodgkins; I might have attended to my books; I certainly did not spend all my time on that matter. I don't know whether I consumed all the time from the time that Carkin first came there until the order was entered; I judge from my impression. I know that the court does not get here until half past nine, and when I came up into the court room he was in his office, settled down to his desk; I believe he never comes here until half past nine; I think I have never met him in his office until that time. I do not know how long he had been here when I got there; do not think

it is true that I made application first to Judge Blodgett that morning in the neighborhood of nine o'clock. No, sir, I did not look at my watch or a timepiece; I only judge from usual —— I understand the Judge would not get here usually until half past nine. I do not think I ever made an application to him for any order, until after that time; the Judge did not tell me that he would not grant any such order at that time in the morning; he did not say that it was a little early; I swear to that positively; made no such statement in my hearing.

By MR. TENNEY. I do not think of any questions to ask; if there is anything, Mr. Hancock, that you want to explain in this matter go ahead and do it.

By the WITNESS. I do not think of anything just now.

Mr. Stiles appears on behalf of Conro & Carkin, but does not desire to cross-examine the witness.

DEPOSITION OF A. C. ELLITHORPE.

Examined by John S. Cooper, Esq., on Behalf of the Petitioners.

My name is Albert C. Ellithorpe; occupation, money broker; age, fifty-two; residence, 100 Ashland avenue. I know Charles S. Crane and Jefferson Hodgkins; I have known Mr. Crane about seventeen or eighteen years—eighteen years, I guess; our acquaintance commenced in Chicago; I have resided here a little over thirty-seven years. The general report here, so far as I have heard, is that Crane Brothers and Charles S. Crane, as to financial responsibility, stands "A No. 1;" they are considered by the community a first-class house, financially, and they are generally pretty well known. I was at Charles S. Crane's office on Friday, July the 9th, of this

year, a little after four o'clock; I came up to the office through the tunnel; went through the tunnel; and we were standing talking on the corner when Mr. Hodgkins came up; that was at the corner of Canal and Washington, close by Mr. Crane's office; Mr. Hodgkins came along and said to Mr. Crane, "You are the successful bidder on that dredge property." I am sure that was on Friday, July 9th.

EVIDENCE TAKEN

ON BEHALF OF RESPONDENTS.

DEPOSITION OF WILLARD S. CARKIN.

SEPTEMBER 30, 1875.

Examination by I. N. Stiles, Esq., on behalf of Conro & Carkin.

My business is contractor. I recollect an interview between Mr. Crane, Mr. Conro and myself, sometime in July last, in Skinner's hotel. The interview was in regard to the purchase of a dredge owned by Crane, and the bid for the Fox & Howard dredge stock, which he claimed was his. He claimed that the bid was controlled by him. He said he did not care to continue the dredging business, and if he could be bought out he would turn that bid over and the dredge he then owned; he made a proposition that he would sell his dredge. I think the dredge alone was to be eleven thousand dollars. There was a dredge and a derrick, I think, and he said he would sell both of those for twelve thousand dollars, and he promised to sell the derrick to somebody else for one thousand dollars, and if we took it, the dredge alone would be eleven thousand dollars; and in consideration of Mr. Conro and myself buying the dredge, he would turn this bid over, which he claimed as his. He said that he controlled the bid; it was not in his name; but he controlled it. We told him we would take the dredge at the price named, and he said he would go into the concern if we chose to have him; and in

case he went in, that the concern was to pay eleven thousand dollars for the dredge and he to have a quarter in it. He said he did not care whether he stayed in or was left out — it was optional with us; that he wanted to go out of dredging or else have more of it, and it should be optional with Conro and myself whether we took his dredge and gave him a quarter interest or not. Nothing said at the interview about Kimball and Miller taking an interest. I never knew of any arrangement that was made between Hancock, the assignee, or Crane and Hodgkins, or either of them, about the payment of any money on account of this bid on Monday morning; have never been told so. Was at Crane's office on Saturday morning, July 10th; had a talk there about Hodgkins' going to see the property down at Calumet. I acted upon the arrangement that I supposed had been made at Skinner's hotel, and supposed I owned an interest in the stock and bid, and I suggested it would be well to know where this property was, and what condition it might be in. I said nothing to Hodgkins or Crane about turning over the property on Monday morning. I think I gave Hodgkins a ticket to go to South Chicago; I think I had one and gave it to him; I gave it to Mr. Hodgkins because the fare would be less.

Cross-Examination, by J. S. Cooper, on behalf of Petitioners.

Am stopping at the present at Harry Fox's, at Chicago; am boarding there with him. My family is in New England, at Bennington, New Hampshire; my family have lived here a good deal and there too; I claim that as my home, although I do not go there sometimes for two or three years; I make that as my home; make it my home wherever I may be. When my family have been here I have always lived at a hotel or boarded. I have been boarding with Harry Fox for two years; have been there during the last two years every time I have stayed in Chicago; made that my home. I have never been in business with Fox. I know Conro personally; I have known Conro from eight to ten years — ten years within a year or two. Never been in business with Conro before this

outside of this Fox & Howard property. I have had a dredge and machinery here in Chicago; there is a portion of machinery here now; sent the dredge away a month ago to Sheboygan, Michigan. I have some dredging property, scows and tugs, here; the value of the property is from six to twelve thousand dollars. I shall take the property where I can occupy it; remain here at present. I have some contracts out of the state; do not think I have any work here for my dredge property outside of the Fox & Howard property. Own no real estate in this state; have office and office furniture here in this state; have some notes and bonds; do not know whether they are by parties living in the state or not, without examination.

Witness is asked whether he will annex to his deposition, after examining his notes and bonds, a statement of credits he has in this state due from persons residing in this state. Witness states he does not know whether he will do it or not; could not say whether there would be any objection to do it or not.

First saw C. S. Crane during the week the sale was to be awarded, that is the week ending Saturday, July 10th; am inclined to believe I saw him first at Skinner's hotel; do not think I ever saw him before that; I have heard of him before that, cannot tell when; it was within a month before that; I cannot tell whether it was within two weeks before July 10th. I knew that he owned the dredge; I was on board of it sometimes; I was on board the dredge once when Mr. Hodgkins was there; was on board the dredge sometime this summer of this year; I think it was before Fox & Howard were put into bankruptcy; it was an accidental matter, and I took no account of it. Went to Skinner's hotel with Harry Fox; cannot tell whether Fox left there before I got there; do not recollect whether Fox went out and left me after I got there; went into the office of the hotel when we went into the hotel; guess I probably went into the bar-room from the office to take a drink. Cannot tell what place Fox and I left

to go to the hotel; do not have any idea or recollection of what place we left to go to the hotel. Cannot tell the time of day it was; cannot tell whether it was in the forenoon or afternoon, nor whether it was daylight or dark. Could not tell whether we had been in any other bar-rooms before we went there or not; do not know whether Fox asked me to go there or not; have no recollection at all how we happened to go there; all the recollection I have is we were there, and were in the office of the hotel. I remember of going into a private room, where we gentlemen were alone; but it was a previous conversation I allude to. I remember of being there at a time when we were in a private room; the prior time was when Fox and Howard were there together. I am describing an interview that took place before the interview when we went into the private room; it might have been some days before. Conro was not there at that interview; just Crane and myself and Fox were there; I am sure Crane was there. Cannot tell how many days it was before the interview I have testified to on my direct examination between Crane, Conro, myself and Fox; cannot tell about how many days it was; must have been Wednesday or Thursday we had the interview there, when Conro was present; do not recollect whether it was Thursday of the week before that we had the first interview; do not recollect anything that was said or done at the hotel when Fox and Crane and myself were there.

Witness is asked to swear positively as to the prior interview between Crane, Fox and himself at the hotel, as to whether Crane was there?

A. I had the impression that he was; I may be mistaken. I was not there with Fox unless Crane was there; I have been there when Crane was not there; have been at Skinner's hotel with Fox when Crane was not there.

Q. How do you say you were not there if Crane was not there? What do you mean by that?

A. I may have got it mixed, but I may have been there.

with Crane twice, when I was only once at the time Conro was there. When I said it was Skinner's hotel that I first met Mr. Crane, I meant this first interview at Skinner's hotel; I think it was the first interview at Skinner's hotel I had with Crane. Cannot tell at the first interview whether Fox and I were at Skinner's hotel, and Crane came in by accident or not; I ain't positive about that first meeting when I come to refresh my memory about it; I do not remember it positive. I had an impression of meeting Crane at the Skinner house before the meeting with Conro, but I have not an impression of meeting with him anywhere else before that time. I do not recollect of being at Crane's office before the interview at the hotel, on the 8th of July; cannot swear that I was not; saw Hodgkins, the first time, on a dredge sometime this summer; cannot tell when; I went there to see the dredge work; Anson Fox went with me; he is a brother of Harry Fox; I think it was before the bankruptcy; I do not know; I just happened there, no particular business; cannot tell where I saw Hodgkins the next time; no recollection of seeing Hodgkins prior to the confirmation of the bid on July 9th; I do not remember of seeing Hodgkins on the 7th of July,—about the time the bid was put in for forty thousand dollars; do not recollect of talking with him about the bid, about the time it was put in.

Q. Didn't he tell you he was going to put in a forty-thousand dollar bid, and you said it was too much?

A. I do not remember. I try to remember these things as nearly as I can ; I do not remember anything about telling Hodgkins that Fox's friends had agreed to come forward with the money, but they had not come forward as rapidly as he expected; cannot tell when I first heard or knew of this bid of forty thousand dollars being put in; heard of it before this interview of Thursday at Skinner's hotel; cannot tell from whom ; do not remember whether I had a talk with Harry Fox about it; do not think I talked with Anson Fox about it; I do not remember of talking with Albert Conro about it ; I might.

Q. You say you and Harry Fox and Conro—you do not remember?

A. As to Anson Fox, I do not think I do.

Q. What do you maan by I do not remember—that it is probable you may have talked with those two, but it is improbable you talked with Anson Fox; is that it?

A. In regard to what?

Q. In regard to this bid—in regard to this bid having been put in for forty thousand dollars?

A. I do not know why I should talk with Anson Fox about it.

Q. Is there any reason why you should talk with the other gentleman about it?

A. It has been discussed; cannot tell when, but probably before this interview at Skinner's hotel; went to Skinner's hotel with Harry Fox the last interview; I cannot tell what place we left to go from; that interview was towards night; Fox and I went there together; cannot tell where we went when we got into the hotel; went into a private room before I came away; cannot remember whether I did when I first went there or not; cannot remember whether we found anybody there when we went there. Mr. Conro came in and joined us after we got there. I think Mr. Crane was there when Mr. Conro came in; no, I think Crane did not get there until after Conro did; Fox and I were there when Mr. Conro came in; cannot tell how long we had been there when Conro came in; a short time; cannot tell whereabouts in the hotel Fox and I were when Conro joined us—probably down stairs; we were down stairs when Conro joined us; I can remember distinctly that Mr. Crane came in and joined Mr. Conro, Fox, and myself whilst we were down stairs; remember it distinctly and definitely; cannot tell how long it was after Conro came in before Crane came in; were not waiting there any

great time ; my best impression it was not very long before Crane came in; cannot tell what we we were talking about before Mr. Crane came in; we might have been talking with reference to this bid of forty thousand dollars ; cannot remember positively that we were talking about the bid of forty thousand dollars ; cannot remember of talking about anything else; cannot tell what we were talking about when Crane came in. After Mr. Crane came in, he says, " We better have a room." I think Mr. Crane said that; some one said it. I am very sure it was Mr. Crane said it.

Q. Why are you very sure it was Mr. Crane? What is there particular about the remark that called your attention to it so you can tell now it was Mr. Crane?

A. Well, that is a hard question to answer positively.

Q. What?

A. I could not answer that question positively. When Mr. Crane said we had better have a room, we went up-stairs to a room ; cannot tell who called the room ; do not know whether it was Harry Fox that called for the room ; had a room to do our business. Cannot tell whether Crane went there accidentally or was sent for. I do not know that Harry Fox went for him ; he might. I am positive that Harry Fox and I went over to the hotel alone. I am perfectly positive that Mr. Conro got there after I got there. I had been informed before this interview that the bid of forty thousand dollars of Mr. Hodgkins was in; cannot tell by whom I was informed. I cannot swear directly how it was, whether I had been informed before this interview that Mr. Crane was interested in that bid direct. According to my best recollection, I think I might have been informed that Crane was interested in it, or interested in some way in it.

Q. You had known before that time that Hodgkins was in Crane's employ, hadn't you? had been told so?

A. Yes. Well, I say that I hadn't. Let me correct

myself. I saw him on this dredge at the time; I had been told that it was Mr. Crane's dredge. There was something said during this interview about Crane's contracts outstanding for dredge work. The talk was he wanted to get rid of his contracts as well as his dredge, and if we took the dredge we would assume the contracts also and carry them out. That was the talk. I guess Mr. Crane did the principal talking at that interview. I think Conro talked. I talked. I do not remember whether Harry Fox talked or not. I coincided with Mr. Crane's proposition; cannot tell what I said. I agreed to do something at that conversation. I agreed to buy his dredge; agreed with the others, Mr. Conro, for eleven thousand dollars, and assume the contracts.

Q. When were you going to buy the dredge; when did you agree to carry this out?

A. If we bought the other property — the Fox & Howard dredge property. If Crane bought it on this bid of forty thousand dollars, then we were to carry this out.

Q. Are you sure that when Crane got this property that then you gentlemen would, according to the agreement that was made you and Conro were to take the property of him, take his dredge at eleven thousand dollars, and assume his contracts; was that a definite arrangement?

A. Yes. We were to take the property off his hands; do not remember when we were to pay him for it. There was something said about paying him for his dredge; do not remember when we were to pay for it. Crane decided to have it paid for; Crane told when he wanted it paid for; cannot remember when he said he wanted it paid for. We agreed to do it when he wanted us to pay for the dredge.

Q. What was the arrangement about paying for the property — the Fox & Howard property?

A. I do not remember; I suppose at the time when he paid for it, when he got it. I am not sure on that point.

Q. What?

A. I don't know; there was no arrangement, The presumption was we were to pay for it when he did, I suppose.

Q. I did not want to know any presumptions, I want to know what the agreement was?

A. Well, I cannot tell.

Q. Cannot tell?

A. No. There was an agreement about paying, but I cannot remember what it was.

Q. Don't know whether there was any agreement about it or not?

A. Yes, sir, there was, but I cannot remember what it was.

Q. How can you remember that there was one, if you cannot remember what it was?

A. In regard to the payment of what—on his dredge?

Q. No. On the Fox and Howard property?

A. No, I cannot remember when we were to pay for it. We were to have the option of letting Crane into the arrangement between us three, or keeping him out, just as we chose; that was Crane's proposition.

Q. Did you yourself, make any proposition, you, or Conro, or Harry Fox, while he was there?

A. He made the propositions himself.

Q. Did you make any proposition?

A. There was no need of it, we had to accept his.

Q. Did you make any proposition?

A. I do not remember as we did.

Q. Why did you have to accept his proposition?

A. In order to consummate the trade.

Q. Why was he master of the situation as you looked upon it?

A. That is the way I looked upon it, and supposed we had come to his terms.

Q. Was this interview of his seeking, or your seeking?

A. This interview at that time?

Q. Yes?

A. It was not my seeking, I do not think.

Q. I mean Conro, Fox and yourself; did he ask you to meet him there, or did you gentlemen, or one of you ask him to meet you there?

A. Cannot tell; do not remember; I think Fox sent for Conro, that is the reason why he happened to be there; sent for him to Milwaukee, I suppose; cannot tell whether it was to meet us at that hotel or not. Fox wanted me to go there too; he wanted me to go there in regard to this dredge stock.

Q. In connection with this bid of forty thousand dollars?

A. It was in regard to the dredge stock.

Q. What was to be in regard to the dredge stock; what relation did it have to the dredge stock, the purchase?

A. Yes.

Q. From whom?

A. Mr. Crane. He told me he would meet Mr. Crane there. I expected Mr. Conro would be there; cannot tell as

I heard that from anybody else, than Harry Fox; cannot tell what date I learnt that the sale of this property had been confirmed by the court, but it was sometime during that week; I knew that at the time I called at Crane's office and gave Hodgkins a ticket for South Chicago, that the sale had been confirmed; it was in the morning I called at Crane's office on Saturday; I do not know who told me it had been confirmed; I always saw Harry Fox every morning; I do not know as I saw him that morning; I stayed at his house.

Q. How did you happen to go there to Mr. Crane's office that morning?

A. I went over to act on this previous arrangement made on Thursday by Mr. Crane, Conro, and myself.

Q. Before you went over there, then, you went over there to see when that property could be taken, didn't you? Find out when you got the property?

A. Well, I suppose so.

Q. Didn't you go to see whether he had got the property yet or not?

A. I don't think I did.

Q. Why didn't you?

A. I don't know.

When I was there I knew that he had not got the property yet from the assignee. I knew he hadn't it. I did not ask him why he hadn't got it. Did not know when he was going to get it, but expected to get it. I do not remember of asking him when he was going to get it, nor when he expected to get it.

Q. Can you remember definitely and distinctly what took place in that conversation in Crane's office, Saturday morning.

A. No, not at all. The reason he wanted to send Hodgkins down to South Chicago for, if he was going to have an interest in the property, he wanted to know whether there was any such property, and where it was. The reason why I didn't go myself, I think Hodgkins wanted to go, I suppose. I do not know whether Hodgkins wanted to go. I know I did not want to go. I do not remember whether Crane asked Hodgkins to go and see Hancock, to ask whether Hancock wanted to go down with him. Do not remember anything being said about it. Did not go to see the assignee on Saturday, July 10th. Did not send anybody. Did not make any arrangement on Saturday, July 10th, to pay for this property, to pay Mr. Crane on Saturday. Before that time I had made arrangements. I expected to be interested in the property—have to pay for it some time. Did not know when. Borrowed my money at the bank, the National Bank of Commerce. I had some eighteen or nineteen thousand dollars in the bank on Saturday, July 10th. Did not get any of it from Harry Fox. Did not get any of it from Mr. Conro. I did not have any contracts of my own on which to employ this Fox & Howard property. I had the privilege of putting a dredge on Gutch's contract at South Chicago. I think I had no other contract here in Chicago. I cannot tell whether I had any dredge here at the time—that I had the privilege to put one to work Gutch's contract or not. Did not have more than one dredge here. Had one dredge; did not put it in any bid for this property. I did not know, and had not been informed on Saturday, July 10th, that the property was going to be turned over on Monday. No recollection of asking Mr. Crane when he could turn the property over to me in accordance with this arrangement.

Q. Well, why didn't you?

A. There was no hurry about it.

Q. You were in no hurry about it?

A. No.

Q. Why were you in no hurry about it?

A. Cannot tell why?

Q. Did you want to use this property?

A. There was no particular need of it. It was expected between Conro, and Harry Fox, and myself, that we would carry out the contract with the city of Fox & Howard. This was in the middle of the season for doing that kind of work.

Q. Well, wasn't it important for you to get possession of this property to get it to work as soon as possible, so as to make it profitable?

A. No.

Q. What did you want it for, then?

A. Cannot tell.

Q. That is to say you wanted to take this property at forty thousand dollars and did not know what work in the world you wanted it for, and cannot tell?

A. Wanted it for to do dredging business. Wanted it to do dredging business wherever I could find it, and see any profit in it. I do not think I had any work of the kind. Have to hunt for it. Contractors have to do it all the time.

Q. Had you work to keep the dredge property you then had employed?

A. Yes.

Q. And more too?

A. Got along with it, and have since, without this property.

Q. So, the truth is, you then had dredge property enough to do the work that you then had, without this property?

A. No, not at all. The reason he wanted to send Hodgkins down to South Chicago for, if he was going to have an interest in the property, he wanted to know whether there was any such property, and where it was. The reason why I didn't go myself, I think Hodgkins wanted to go, I suppose. I do not know whether Hodgkins wanted to go. I know I did not want to go. I do not remember whether Crane asked Hodgkins to go and see Hancock, to ask whether Hancock wanted to go down with him. Do not remember anything being said about it. Did not go to see the assignee on Saturday, July 10th. Did not send anybody. Did not make any arrangement on Saturday, July 10th, to pay for this property, to pay Mr. Crane on Saturday. Before that time I had made arrangements. I expected to be interested in the property—have to pay for it some time. Did not know when. Borrowed my money at the bank, the National Bank of Commerce. I had some eighteen or nineteen thousand dollars in the bank on Saturday, July 10th. Did not get any of it from Harry Fox. Did not get any of it from Mr. Conro. I did not have any contracts of my own on which to employ this Fox & Howard property. I had the privilege of putting a dredge on Gutch's contract at South Chicago. I think I had no other contract here in Chicago. I cannot tell whether I had any dredge here at the time—that I had the privilege to put one to work Gutch's contract or not. Did not have more than one dredge here. Had one dredge; did not put it in any bid for this property. I did not know, and had not been informed on Saturday, July 10th, that the property was going to be turned over on Monday. No recollection of asking Mr. Crane when he could turn the property over to me in accordance with this arrangement.

Q. Well, why didn't you?

A. There was no hurry about it.

Q. You were in no hurry about it?

A. No.

Q. Why were you in no hurry about it?

A. Cannot tell why?

Q. Did you want to use this property?

A. There was no particular need of it. It was expected between Conro, and Harry Fox, and myself, that we would carry out the contract with the city of Fox & Howard. This was in the middle of the season for doing that kind of work.

Q. Well, wasn't it important for you to get possession of this property to get it to work as soon as possible, so as to make it profitable?

A. No.

Q. What did you want it for, then?

A. Cannot tell.

Q. That is to say you wanted to take this property at forty thousand dollars and did not know what work in the world you wanted it for, and cannot tell?

A. Wanted it for to do dredging business. Wanted it to do dredging business wherever I could find it, and see any profit in it. I do not think I had any work of the kind. Have to hunt for it. Contractors have to do it all the time.

Q. Had you work to keep the dredge property you then had employed?

A. Yes.

Q. And more too?

A. Got along with it, and have since, without this property.

Q. So, the truth is, you then had dredge property enough to do the work that you then had, without this property?

A. Could get along with it, and work more to advantage perhaps. Have not used any of this Fox & Howard property in carrying out my contracts. Had an interview with the assignee on Sunday night, July 11th, at Harry Fox's house, in the evening. The reason he came was that I left word that I wanted to see him; I left word down at some stable, where he was liable to turn up; I cannot tell where. I went there myself; cannot tell who said he was liable to turn up there; he kept his horse over there; I do not seem to remember how I found that out; found it out on Sunday; did not find it out on Saturday night; did not know anything about it on Saturday night. Saw Anson Fox on Sunday; met him on the street on the North Side as I was going to church, and he was going towards Harry Fox's house. When I went to church I do not remember whether I left Harry Fox at his house or not; he did not go to church with me. When I returned from church I found Harry Fox there; I did not find Anson Fox there. I learnt that Anson Fox had been there while I was away; Harry Fox told me he had. He said that he, Anson Fox, told Harry Fox, and Harry Fox told me, that he had seen Hancock the night before, and Hancock said he did not believe those fellows would take the dredge stock at all, and if he could find anybody to buy it he would sell it. I started off to see the assignee after I got my dinner; I went down to the stable; Anson Fox had told Harry Fox where Hancock kept his horse; I left word I would like to see Hancock when he returned; did not leave any note for Hancock. I have not been specially out to look over this dredge property; all this I had been familiar with, all the time Howard had had something to do with it; I knew very well what it was. I was in the usual sitting-room at Harry Fox's house, when Hancock came there Sunday evening; we sat down and had a talk when the assignee came in; cannot remember what he said first; cannot remember about what it was; cannot say what I said; could not tell what Harry Fox said; the subject matter of the conversation was in regard to the dredge stock. I asked Hancock if I could buy it; he said I could. I knew at this time that this order of sale on this bid had been confirmed by the court. Hancock

said he did not believe they would take it; he said they had not done as they had agreed about it at all; said they had not come forward with the money. I did not tell him part of the money was coming from me and Conro; I did not tell him anything about this interview at Skinner's hotel, that I remember of.

Q. Do you swear you did not?

A. I did not.

Q. Did Harry Fox?

A. I do not think he did; I did not hear him.

Q. Did you tell him anything about this interview you had had in Crane's office that morning?

A. No.

Q. Why didn't you?

By Mr. Stiles. Not that morning?

By Mr. Cooper. Saturday morning, I mean.

A. I did not know why I should volunteer.

Q. Didn't?

A. Tell him! I don't know why I should tell him.

Q. You had already arranged with Crane to take this property and pay him for it?

A. Yes.

Q. And buy his dredge?

A. Yes.

Q. And pay him for it?

A. Yes.

Q. And take his contracts off his hands?

A. Yes.

Q. And he was the man who has to take this property from the assignee — you knew that?

A. I knew he had agreed to.

Q. You knew that?

A. Yes.

Q. Then why didn't you tell the assignee about this matter?

A. I had no occasion to tell him. Mr. Crane had talked the thing then, when I was there Saturday morning, and wanted to make a new concern, and I supposed he had.

Q. Mr. Crane repudiated this arrangement, did he?

A. Yes, sir, he wanted to take in Mr. Miller & Kimball?

Q. That morning?

A. That morning I was there.

Q. What did you say to that?

A. I told him I thought it was too many men.

Q. Well, was there any talk between you and Crane that that arrangement at Skinner's hotel was off, and Crane did not consider himself bound by it, and you did not either?

A. I did not think that Crane considered himself bound by it.

Q. Did you say you would not stand to that arrangement made at Skinner's hotel?

A. When he remarked about having Mr. Miller in, I told him I thought it was too many.

Q. Was that all that was said?

A. I do not remember anything else.

Q. What did he say?

A. I cannot remember.

Q. Did he persist in having them in?

A. He said he thought it was the best way; make it stronger, I think. I don't know as Fox at that interview on Sunday night told Hancock about the interview he had with Crane on the previous afternoon; Harry Fox, he told me about it. On Saturday he told me, sometime in the course of the afternoon; I think towards night he told me Crane wanted me to go in as a fifth interest, and have Mr. Crane, Mr. Hodgkins, Mr. Miller, Mr. Kimball and Mr. Fox in the concern.

Q. I want to ask you whether Mr. Crane made any secret of the fact that he was responsible for Hodgkins' bid at that interview at Skinner's hotel—that that was his bid?

A. He said he controlled the bid.

Q. You believed it at the time, didn't you?

A. I believed it because he said so. I cannot tell you as I ever had been told about Crane's financial affairs or business connections; I supposed he was a man of responsibility pecuniarily.

Q. Then I will ask you why it was you did not tell the assignee when you had the interview with him there that Sunday evening!

A. I did not.

Q. Why?

A. Oh, can't tell.

Q. I will ask you whether it was not a matter of fair and honest dealing toward Mr. Crane to have told the assignee what you supposed was Mr. Crane's financial responsibility; that he was backing up this bid, and that there would be no trouble on getting his money on that?

A. I could not assume to say that.

Q. Why?

A. I had no reason to do so.

Q. Did you have any doubt about Crane's taking that property and paying the money from the interview there at his office on Saturday morning?

A. Well, I thought it depended some on what sort of a company he got up.

Q. Whether he took the property?

A. Yes.

Q. Did he say so?

A. No.

Q. What did he say, looking that way, now please?

A. Well, he wanted to take and change the company from what the talk was when at this Skinner's hotel meeting between us.

Q. Previous to that meeting at Skinner's hotel, he had caused this bid to be put in for forty thousand dollars, hadn't he?

A. I do not know whether he had or not.

Q. At the time you had that interview there, the bid was in?

A. So reported.

Q. He claimed to control the thing, didn't he?

A. When?

Q. Before you had this interview with him at Skinner's hotel, at that time he claimed to control it?

A. At that time he did.

Q. Why should you suppose that upon the formation of a company depended Crane's taking this property if he had put in this bid outside of the formation of the company, or of anything else, without any connection with you or Mr. Conro, or Harry Fox?

A. That is pretty blind: I will have him repeat it to me.

Q. Let the reporter read it over.

[The stenographer read the question.]

A. (To stenographer.) Please read it again.

[The stenographer read the question.]

A. Is there any "yes" or "no" to that question?

Q. Is that the answer?

A. That is the answer.

Q. I want to ask you, Mr. Carkin, again, why you supposed the payment of this $40,000 to the assignee by Crane depended upon the formation of a company, when you knew that this bid had been put in before any talk of a formation of a company, and that Mr. Crane held himself responsible for it?

By MR. STILES. I object to that question, on the ground that nothing has been said by the witness that warrants the assumption that he knew that Crane was responsible for it.

A. Because Mr. Crane said so. He said he could control that bid, that he could take it or not, just as he chose.

Q. Did you ask the assignee what efforts he had made to get this payment of $40,000 that night?

A. No.

I did not coincide with, or dissent from, the remark of the assignee, that the other parties had not come to time, and that the sale had fallen through. I wrote a letter to the assignee, signed Conro & Carkin, in the form of a bid, dated July 12th, at my office, on Monday morning, at nine or ten, or eight to ten. I left my house to come to the office that Monday morning the usual time, about eight o'clock. I think I went directly to the office, and wrote this bid when I got there, and took it immediately out and took it up to the assignee; got to the assignee's office at nine or half past nine. He told me the night before to come there about nine o'clock if I wanted to bid; I did not tell him I would bid; think I got there on time, about; I do not think I got there before nine o'clock that morning; just about that time. I think I had my check for $15,500 with me when I got to the assignee's office; I do not know about that; I got it at the Bank of Commerce; got my check of the teller and wrote it myself; the teller certified it; cannot remember whether the bank was open for business yet; had not made any arrangement to have the teller down there that morning; cannot remember whether I went immediately from the office to the bank on my way to the assignee's office; I did not go to the bank before I went to my office, on coming from home that morning; I went to my office first, and there wrote out the bid for the property; cannot remember whether I went to the bank first or came to the assignee's office; he wanted I

should bid on the property the night before; I told him I would not bid on it unless there was going to be a purchase. Did not tell the assignee where I would get any money on that Sunday night; had never seen the assignee before this, only once or twice; went into the office the first of his being appointed, saw him then; went there in relation to the dredge stock; was not interested in the first bid that Conro put in.

Q. No way?

A. Well it was not understood that it should be, I don't think, but I do not know but it was; it was understood that I should be in the arrangement that Conro made at Skinner's hotel; it was understood between Conro and myself; we had come to that understanding at that time; it was before the interview that Conro told me he would take an interest in the stock if he bought it; said he would take an interest for himself, I suppose.

Q. Didn't you understand that he was going to or was willing to advance money to help Harry Fox?

A. Yes.

Q. Wasn't it for Harry Fox—wasn't it in the interest of Harry Fox?

A. Well, I could not answer that question. Before the interview at Skinner's hotel Conro told me he did not want to be interested in dredge property here to give it his personal attention.

Q. Well, didn't he say that he had dredge property enough of his own?

A. He might have said that; I would not say that he did or did not; most any man has got dredge property enough if he has got any. I got the other certified check for twenty-five thousand dollars right off then; Howard got it at the First National Bank; no one went there with him; did not have

any deposit there, but had done a great deal of business there. Got a loan of the money; Mr. Nickerson made it to him; the loan was on call—no specified time; did not put up any collateral security for it; did not use anybody else's name in connection with it; Mr. Conro paid me some of this money back; cannot remember the exact amount; I could tell over here; paid something over twenty thousand dollars; cannot tell how much over that exactly. The way the amount was arrived at which he was to pay me, was, that I was to have a third interest in the stock; Conro paid me for two-thirds of it; paid me two-thirds of forty thousand five hundred dollars; cannot tell when he paid it; before long; think it was not that same date; I cannot give you the exact date; he gave me a portion of the money personally the next day or two in Chicago; he went to the First National Bank with me and indorsed it on the note; he brought down a portion of the money with him, and I went with him to the bank and he indorsed it; he did not have enough, but he afterwards sent enough; sent it within a week; cannot tell exactly; can swear I was here within a week of that Monday; could not swear that he was. Cannot remember whether I got a telegram from Conro Sunday night or Monday morning; I do not know whether I did or not; I do not think I got a letter from him; cannot tell whether I got a letter or telegram from the first of July, up to and including the 12th of July; I cannot tell whether I got any letter or telegram from Conro, from the time of the meeting at Skinner's hotel on the 8th of July up to and including the 12th of July, or whether I had any communication with him; I have no recollection; do not always preserve letters or telegrams received by me on business. Am not a good book-keeper; I keep an office here — no book-keeper. I do not remember that I got a telegram from Conro on Monday evening.

Q. Now don't you remember that you got a telegram from Conro on Monday morning?

A. No, I do not.

Q. Don't you remember of receiving any telegram from him on Monday morning?

A. Cannot say I did.

Q. Can you say you did not?

A. No.

Q. What is your best recollection about it, either Sunday night or Monday morning?

A. I cannot remember; perhaps I could by refreshing up a little.

Q. I wish you would refresh up, then.

A. I will do the best I can.

Q. And if you have got any such telegram annex it to your deposition in this case?

A. I will do so.

Q. And if you have not, just state at the close of your deposition that you have not received any letter or telegram?

A. When have I got to do it?

Q. When you sign this deposition.

So far as possession is concerned, considered myself in possession of this property after getting a bill of sale. I think I was up to the yard when the property was turned over; some portion of it was there; I could not go to all of it.

Q. Well, were you present when it was being turned over?

A. Pretty hard work to be present when turning over dredge stock scattered over the whole State and the State of Wisconsin. Had Anson Fox to represent me. Fox & Howard had the lease of it, and I agreed to let them go along for a certain length of time on that lease; the lease was from the

assignee; I think the lease ran to the first of next month—to the first of August. They were to pay Conro and me the same as they were paying the assignee; did not make any contract in writing to that effect; do not remember with whom I made the agreement; expected to get the proceeds and benefit; made the arrangement to get the proceeds with Fox & Howard; saw Harry Fox about it; think saw William B. Howard about it; did not take contract in writing about it; verbal agreement among contractors were generally considered satisfactory; I put a dredge at work on a man's contract at South Chicago the other day upon a verbal contract. Fox & Howard kept possession of the property until the first of August, according to the agreement. After the first of August Fox & Howard went to work with the property on account of Conro & Carkin. Cannot tell when I left to go east; it was after the first of August; cannot tell how long after; it is a very easy matter for me to tell anything of that kind that you wish; left to go east in the middle of August—thereabouts. I was in court before Judge Drummond, in Chambers, when he heard this petition on review to decide it.

Q. Were you not there when Mr. Tenney said he represented Conro and Carkin?

A. I do not remember about that.

Q. You were there on that occasion?

A. I was there at that time. I was in a short time.

Q. You heard Judge Drummond's decision on the matter?

A. Yes.

Q. What arrangement did you make with Fox and Howard after the first of August, or on that date?

A. Read the question. [The stenographer read the question.]

A. I do not know what arrangement was made that day.

Q Well, about that time with reference to use by Fox & Howard of this property that you have testified to?

A. I cannot tell exactly.

Q. Did you make any arrangement of that kind personally?

BY MR STILES. Of what kind?

BY MR. COOPER. That is to say with reference to the employment of this property?

A. They were to let Conro and I put it to work, on whatever work they had—Fox & Howard had. They had a bridge foundation putting in; he was to do that. Conro and Carkin was to divide the profits, I believe.

Q. To divide the profits with them?

A. Yes, sir.

Q. How, equally?

A. Cannot remember just how that was.

Q. Don't you know under what arrangement or agreement that property is to do work?

A. This work; Conro & Carkin have earnings of it.

Q. All of them?

A. Yes, sir. We commenced when we took possession of it, and I think it was the first of August, or about that time.

Q. With whom were you to divide profits? You think they were to use the property on their contracts, and divide profits?

A, Yes, sir.

Q. Divide the profits with whom?

A. Between Conro & Carkin, and Fox & Howard; cannot remember exactly in what proportions the profits were to be divided. I know what the arrangement is now, the property has what it earns. The arrangement to divide the profits was as to the bridge foundation. Conro & Carkin were to have the earnings of the property outside of the bridge contract. The arrangement is as above stated. From the first of August, down to the present time, I have my interest in the profits. I have not drawn any interest in the profits. The account of the profits are kept by my own bookkeeper, the bookkeeper of Conro & Carkin. They have been kept in the old Fox & Howard office; they are not there now; they are now at my office; it was changed to-day from Fox & Howard's old office to my office.

By Mr. Tenney. Enter that the attorney of the assignee, protests against this kind of examination being spread out in this way.

By Mr. Cooper. Please put down if you like, for the benefit of the attorney of the assignee, that it takes from us that which does no harm.

A. Anson Fox has been the general walking boss in charge of the property since the first of August, down to the present time, and Harry Fox is looking after it.

Q. How much are you paying those gentlemen?

A. There never has been any special agreement in regard to it; it is open. One of the contracts of Fox & Howard has been assigned to Conro & Carkin, the contract with the city of Chicago. I think the dredge contract has not been assigned. Anson Fox was to have a stipulated salary; we did not agree upon it. It depends somewhat on the business how much Harry Fox is to have, remains open. Not much con-

versation between me and Harry Fox and Conro, in regard to it. When I went East, I told him he must run the business, as best he could; I was obliged to go. Before I went East, had been running it myself, as you might say, but it was understood Fox should assist; should have his good will and assistance in the business.

Q. For how much?

A. No amount specified. I did not go to see Mr. Crane that Mouday morning that I made the purchase before I went to the assignee. I did not try to find him.

Q. What was your haste about this matter to have this thing closed up on Sunday—to see the assignee on Sunday? Why did you not wait till Monday morning?

A. Did wait till Monday morning, before———

Q. Why didn't you wait till Monday morning before you went to see the assignee in this matter?

A. Well, I don't know as I can tell. Did not know but what somebody else might have thought it was worth looking after.

Q. Why didn't you go over and have a talk with Crane?

A. Cannot tell that.

Q. Cannot tell that?

A. Don't know. Have no occasion for that.

Q. Don't you know that you were in haste to have this arrrangement made on Sunday, for the purpose of having this thing closed up before Mr. Crane could pay this money?

A. No, rather important; if you are going to make a trade, it is no matter how it is done, I suppose. I do not know whether I had heard from Conro from the time of his leaving

the previous week until the time that this thing was closed up. Before Mr. Conro left, after the interview at Skinner's hotel, we had made a definite arrangement as to the proportions we were to have in this property. I was to have a third interest in it. Cannot tell where I made that agreement with Conro. I guess the arrangement was made after the Skinner hotel meeting. Conro and his two partners were to have the other two thirds.

Q. Where was Harry Fox to come in, then?

A. That was a thing to be talked of and be decided upon; which never has been yet. Crane was not going to have anything to do with it. By this arrangement with Conro, we had definitely determined, after this Skinner hotel meeting, to accept Crane's proposition to buy his dredge, take his contract and leave him out. That was the arrangement.

Q. Well, now, did you ever go to Mr. Crane, or make any effort to carry out that arrangement with Mr. Crane, and if so, what?

A. I went over on Saturday, and on ——

Q. What did you do Saturday, now, towards carrying that out?

A. I was ready to carry it out.

Q. Did you tell him you were?

A. Presume I did.

Q. Are you sure you did, positively?

A. I cannot say positively.

Q. Did you tell Mr. Crane that you had come to the conclusion you and Conro would take the property, and his dredge and his contracts, and let him out, as you had the option to do?

A. I might not have told him then, because he had

gotten up the project for introducing a new concern in the meantime, and there was no occasion for telling him that.

Q. You probably, then, did not tell him anything about that?

A. I should presume not.

Re-Direct Examination, by I. N. Stiles, Esq., on behalf of Conro & Carkin.

Q. How much of this property that you and Conro bought is employed now; all of it or part of it?

A. Well, the four dredges are employed, and two of the tugs and one of the pile-drivers.

Q. Has that property been employed most of the time since you made your purchase and took possession of it?

A. Not the whole of it. There did not seem much to do; repairing and fixing it and getting ready to do work wherever we could find the work to do.

Q. Who, if anybody, was made instrumental in getting the contracts you have taken since you have got this property?

A. Well, the contracts really do not amount to much since we have got the property,—simply jobbing work.

Q. What ever there was?

A. Yes; Fox had endeavored to do it as far as he could.

Q. Harry Fox?

A. Yes, sir; in my absence.

Q. You said in answer to one of Mr. Cooper's questions that Harry Fox told you he had had an interview on the Saturday in question with Mr. Crane, at which interview Mr.

Crane proposed they should combine by forming a company, of which he, Fox, should be one member, Crane another, Kimball, and Miller, and Hodgkins? I think you did not state to us what Harry Fox told you, what he said in reply to that? If he told you what he said to Crane in reply, please repeat it?

A. He told Mr. Crane he would not go into an arrangement of that kind.

Q. Did Fox tell you this?

A. Yes.

Q. How long have you known Harry Fox?

A. Twenty years, I suppose.

Re-Cross-Examination, by John S. Cooper, Esq., on behalf of Petitioners.

Q. Why do you answer the questions that the counsel for the respondents here asked you on the direct and re-direct so readily and so fully, and do not answer the questions that I put you on the cross-examination?

A. His question is very plain. He asked me how long I had known Harry Fox? I should judge about twenty years.

Q. How is it that you can remember a conversation that Harry Fox detailed to you as taking place between him and Crane so readily, and cannot remember the other things that I have asked you about on the cross-examination?

A. I think I have remembered any point blank questions you have asked me.

DEPOSITION OF ALBERT CONRO,

SEPTEMBER, 27, 1875.

Examination by I. N. Stiles, on behalf of Conro & Carkin.

Name is Albert Conro; age, fifty-six; residence, Milwaukee, Wisconsin; am contrator; have been engaged in that business about thirty years. I recollect an interview said to have taken place between Charles S. Crane, Mr. Carkin, Harry Fox, and myself, at Skinner's hotel, in July last; it was either the 7th or 8th of July; my recollection would be Thursday; we met Mr. Crane at that place; he claimed to have the control of a certain bid to the property of Fox & Howard, and there we agreed that Conro & Carkin should take that bid off their hands, on condition that we should give Mr. Crane one-quarter interest in the concern, or buy his dredge at his price, and he have no interest — he not having an interest; he would not have any interest. It seemed that Mr. Crane owned a dredge, besides this property in prospect, and he wanted to sell that dredge, and was willing to give this bid up, if we would pay him eleven thousand dollars for his dredge; that is the substance, or he would take one-quarter interest in the forty thousand dollars, and sell Conro & Carkin the dredge at eleven thousand dollars; he so stated in substance. Our reply was, to that proposition, that we would do one of the two things; we were to have two or three days to consider it; I did not see Mr. Crane after that; I heard from him after that. I recollect an interview between myself and Mr. Hodgkins, and Mr. Miller, in Milwaukee, on the Sunday following; myself, Mr. Hodgkins, and Mr. Miller were present at that time. It seems that Mr. Hodgkins and Mr. Miller did not like this trade of Mr. Crane's; they said, at that interview, that they had had an interview with Mr. Fox, to take one-fifth interest, and for me to furnish the money to give to him; and Mr. Crane was to have a fifth, and Mr. Hodgkins a fifth, and Mr. Miller and Mr. Kimball a fifth, and they wanted me to consent to furnish the money for Mr. Fox's one-fifth interest; they

said they had had an interview with Fox; they did not say how that interview resulted; they gave me an impression that it was satisfactory to Mr. Fox.

The impressions of the witness objected to.

Miller and Hodgkins did not undertake to repeat what Fox said as to Mr. Crane's name being mentioned in the conversation, as to anything being said about Mr. Crane's interest in this matter. During the conversation I told them I supposed we had made the purchase of the property of Mr. Crane, and, in reply to that, Mr. Hodgkins said that Mr. Crane had no right to make such a trade, and the bid was his, and he was master of the situation, and that he should not consent to the trade; that was Hodgkins' expression, "that he was master of the situation, and that Crane had nothing to do with it, and that it was his bid." I did not make any response to that. I suppose the interview lasted a half an hour; it was at my house; Hodgkins came to my house on the afternoon of the same day, alone; I do not recollect anything in particular that occured on that last interview, only the same thing was gone over again that he had in the afternoon — pretty much the same thing. In answer to Mr. Hodgkins' proposition, I told him I was willing to carry out the trade I had made with Mr. Crane.

Q. Mr. Conro, I wish you would state whether you had any knowledge, before this purchase by yourself and Mr. Carkin of the property, of any arrangement that might have been made by the assignee in bankruptcy of this estate, and Crane, as to what time he was to pay, or make a deposit, on his purchase?

A. No, sir; I do not.

Q. Of any kind?

A. No; nothing whatever.

Examination Continued, by H. W. Tenney, Esq., on behalf of Assignee.

I had no knowledge of the Crane dredge, spoken of in the first interview; I never saw it; I do not know what it was worth.

Q. Was there anything said in that interview as to the manner in which your trade should be carried out? that is to say, that Mr. Crane should allow this bid to go by default, or anything of that sort, if you prefer it?

A. In the first part of the interview there was, but it was not concluded that way. In the first part of the interview that he would withdraw, let us take the bid, or let us take the bid as he took it — satisfy ourselves about that; but we concluded, before we left, to take the bid on his bid; and the only thing left to settle was whether we would take him in as partner or buy his dredge; and that we had the option of doing.

Q. Was there anything said in regard to this point, that if you made this arrangement with him, that this bid could be withdrawn or allowed to fall, and you could get the property at a subsequent sale at a less price?

A. Yes, sir; he made that proposition. Mr. Crane made that proposition.

Q. What was said about that?

A. That is what he said, that he would withdraw his bid, and we could put in a bid for less if we chose, and take the property at a less figure than he agreed to pay for it.

Q. If you would buy his dredge?

A. If we would buy his dredge.

Cross-Examination by John S. Cooper, Esq., on behalf of Petitioners.

That is my signature to the answer of Albert Conro and William S. Carkin, filed in this case. I think I swore to it. Have known Mr. Carkin for eight or ten or ten or twelve years. Have never been in business with him. Have had some business with Carkin & Campbell, the firm. The extent of the business was not very much, some contracts and some sales of contracts, and some purchases; I should think six, seven or eight years ago when Carkin & Campbell were a firm. We have had some talk since that time and before this bankruptcy matter came up, of going into business, but never came to any definite arrangement. That has been every year for the last three or four years.

Witness shown an exhibit attached to the petition of the assignee, filed July 12, 1875, and thinks that it is in Carkin's handwriting.

Have known Harry Fox for ten or twelve years. We have had more or less business together. He is not a relative of mine; our relations were substantially business, not social. Have sometimes gone to dinner with him when I was here, but our relations were principally business. Our business relations had been probably for the last five or six years. I have lent him money more or less.

Q. You have lent him money?

A. Yes, sir.

Q. Always on security?

A. No, sir.

Q. Did he owe you at the time of the bankruptcy?

A. Yes, sir

Q. He did

A. Yes, sir.

Q. Any large amount?

A. Yes, sir.

Q. Other than the amount mentioned in the schedule, which I think is some four or five hundred dollars—that is, Fox & Howard, Harry Fox, owed you money at the time of the bankruptcy?

A. Yes, sir; Fox & Howard owed us, I guess there was two or three hundred dollars—Fox & Howard.

Q. How much did Harry Fox owe you at the time of the bankruptcy?

A. In the neighborhood of twenty-five thousand dollars.

Q. In the neighborhood of twenty-five thousand dollars?

A. Yes, sir.

Q. For what?

A. Money.

Q. Money that you loaned him?

A. Yes, at various times.

BY MR. STILES. You mean the time of the bankruptcy, or when he was adjudicated a bankrupt?

BY MR. COOPER. At the time the concern went into bankruptcy? You know about the time, it was the petition was filed against them, about the 5th of June, did he owe you twenty-five thousand dollars at that time?

A. Yes, sir.

Q. What for?

A. Money.

Q. Money loaned?

A. Yes, sir.

Q. At what time?

A. Various times.

Q. Did you have his notes for it?

A. Yes, sir.

Q. Have you ever proved up any claim here against his estate for it?

A. Well, he is in bankruptcy.

Q. Please answer the question. Did yon ever prove up any claim against the estate of Fox & Howard, or Harry Fox, in bankruptcy, on account of that twenty-five thousand dollars?

A. No, sir.

Q. Never have?

A. No, sir.

By Mr. Stiles. I do not think Mr. Conro understands your question, and I think you ought to let him understand whether you mean at the time he was adjudicated bankrupt, or before he went into bankruptcy. At the time he was adjudicated bankrupt, Mr. Conro did not mean to state evidently that at the time he went into bankruptcy he owed him any considerable amount.

By Mr. Cooper. On the 5th of June, of this year, how much did Harry Fox owe you — about how much? I won't confine you to the exact amount; but about how much?

By Mr. Stiles. At the time he was thrown into bankruptcy?

By Mr. Cooper. I have fixed my date at June 5th.

A. Well, I say I cannot remember. I cannot call to mind; but I settled up with Mr. Fox at a certain time, and took his note for the balance.

Q. When was that?

A. I say the date I cannot remember.

Q. Can't you tell the month?

A. I have not the note with me.

Q. Can you tell the month?

A. No, I cannot. I cannot tell whether it was May, June, or before May.

Q. Can you tell whether it was this year or not, in 1875?

A. It was in 1875.

Q. It was in this year?

A. Yes, sir.

Q. In settling up with him, did you give him up other notes in place of the one you took?

A. Yes, sir.

Q. You took one note?

A. Yes, sir.

Q. Due in what time, do you remember?

A. I think it was due in installments in five years.

Q. What?

A. Due in installments in five years.

Q. The note provided that?

A. I think so.

Q. Where is that note?

A. That is at home, in Milwaukee?

Q. In Milwaukee?

A. Yes, sir.

Q. I desire you to attach a copy of this note to your deposition when signing the same, or notes, whichever it may be. Do you remember whether other notes were given at that time?

A. All the indebtedness was cancelled, and put into one.

Q. In what form was the indebtedness before that?

A. Pretty much in notes. Some of it was not in notes.

Q. Did you keep a record of that indebtedness?

A. Yes, sir.

Q. Where?

A. In my books.

Q. In your own private books?

A. Yes, sir.

Q. Do you keep an office in Milwaukee?

A. Yes, sir.

Q. And a bookkeeper.

A. Yes, sir.

Q. During what period of time did the transactions in which you had accumulated this indebtedness against Harry Fox of some twenty-five thousand dollars cover?

A. Well, I should think it may have run along some four or five years.

Q. Your books will show that?

A. The papers will.

Q. What papers?

A. The papers I have to show it.

Q. What are they other than your books of account?

A. The bills payable and bills receivable book.

Q. In the books of Albert Conro as an individual?

A. Yes.

Q. What is the name of your bookkeeper who has kept these books?

A. I have kept my own books principally, my individual books.

Q. Your individual books?

A. Yes, sir.

It must have been about Thursday, the 8th of July, that I last saw Harry Fox, prior to the 12th of July; I think it was the same time that I saw Crane, prior to the 12th of July. I could not tell when I saw Anson Fox last, prior to the 12th of July. I do not know at whose solicitation I came down to Chicago on the 8th of July; I thing it was at some invitation, of Carkin, I should think; Carkin invited me by letter; but I am not positive; I may have come by telegram; I do not remember whether I had received any

letters or telegrams from Harry Fox or Carkin, from the 8th of July, when I was in Chicago, untll the 12th of July; I do not remember of receiving any. I do not think I had any communication with Harry Fox or Carkin from Thursday evening, the 8th of July, until sometime Monday, the 12th; I telegraphed them I would be here on Monday; I telegraphed on Sunday evening; I telegraphed after the interview with Miller and Hodgkins; I telegraphed them that if they had any arrangements to make, more satisfactory than the one we had made, to make it, and I would come down on Monday. I arrived in Chicago on Monday, the 12th, about 4 o'clock in the afternoon; I do not think I received any letter from Carkin or Fox before I came, on Monday. I first heard that this property had been sold to Conro & Carkin after I had arrived here, at 4 o'clock, Monday, the 12th. I do not know whether it was to Fox or Carkin I telegraphed on Sunday morning; the substance of the telegram was, that if Fox and Carkin had any arrangement, more satisfactory to themselves than the one made when I was here, to make it, and I would come down on Monday. I did not see the assignee of the estate on Sunday night.

Witness is asked what he means by the statement in answer sworn to by himself, that one of the respondents had an interview with the assignee on Sunday night, when he swears to the answer that it is true of his own knowledge; if he himself was not present at such interview. Says he was told by Carkin, and believed it to be true.

That style of examination objected to.

Had sworn to the answer just as I supposed it to be true. On Thursday, the 8th of July, went to Skinner's hotel from the cars directly; Harry Fox met me at the depot when I arrived, and asked me to go to Skinner's hotel with him, and meet Mr. Carkin and Mr. Crane; I do not know that he said what he wanted me to meet Carkin and Crane for, until we got there. I came down here because I was invited to

come by Carkin and Fox. I supposed it was for the purpose we had some talk of buying some property, and to put in a bid for a part of it. I understcod it was to be with reference to this property, and when I got here Mr. Fox told me he wanted me to meet Mr. Carkin and Mr. Crane at Skinner's Hotel, and I did. He did not say what for, until after we got there. The business came up after we got there. We did not find Mr. Crane there when we went in. I should think we were there a half an hour before Mr. Crane arrived. We did not have any conversation amongst ourselves. After we met Mr. Crane I understood what this interview was for. We had not spoken of it before Mr. Crane came. Before this interview I think I had been informed that the property had been bid in for forty thousand dollars.

Q. By whom?

A. I do not know who; I saw it in the newspapers.

Q. By whom were you told?

A. I could not tell.

Q. Didn't Harry Fox tell you?

A. I do not know but he did, and I do not know as he did. He might have done it.

I do not know as it was a matter of conversation between us, until we met Mr. Crane. It was when we met Mr. Crane that the forty thousand dollar bid was canvassed. I understood that it had been put in in the name of Hodgkins. Mr. Crane claimed to be the man behind the bid, for whom it had been put in. I did not know who Hodgkins was. I did not know what relation he sustained to Mr. Crane until Mr. Crane told me. He told me Hodgkins was his superintendent, and if the trade went on he wanted me to provide for him to carry on his contracts. I took it for granted when Crane told me that Hodgkins was his superintendent, that it was true and he was in his employ. I could not say what was the first thing said when Mr. Crane came in, or who said it. The question came

up of course when we came together, as to what was to be done. Mr. Crane made a proposition direct. It was, substantially, that if we would buy his dredge at a price, and I think the price was eleven thousand dollars, but I would not be particularly positive about it — might have been twelve thousand dollars, that he, Crane, would withdraw his bid, the Hodgkins bid, and allow us to put in a bid, and take the property at a lower price. I swear that he made that proposition to me. At how much lower price we should take the property, was not fixed. I do not remember that it was said to Mr. Crane by either Harry Fox, Carkin, or myself, that Mr. Crane's bid was altogether too high. We did not want to buy it for less money. We concluded to take the property at Crane's bid, on his bid. The bid was to remain at forty thousand dollars, and we were to take the property at that.

Q. Didn't you think that that was a pretty high bid for the whole property, inasmuch as the next highest bid of Hale and Ayer was for thirty thousand three hundred dollars?

A. It was only a question of taking the property. I did not think the bid for forty thousand dollars was too high. I put in a bid for part of this property, I do not know what proportion; it was only a small proportion; I think, two dredges; I do not know what percentage of the whole property in value. I do not remember what the bid is now at all, nor what proportion it was of the whole property. I think Mr. Carkin made up the bid. I think I looked it over before I signed it. I wanted this property that I bid on to use it in Chicago. Did not have any contracts in Chicago. I wanted to use it as contracting property with Mr. Carkin.

Q. This bid, then, was the bid of yourself and Mr. Carkin?

A. I think that he bid for something else, I believe. We had not made any arrangements to go into business here if we got the property on this first bid. I have talked with Mr. Carkin three or four years, looking to an arrangement for going into business with him, and perhaps this last

year Harry Fox has tried to have me interest myself here; previous to that it was principally Carkin. I do not know whether the proposition made at Skinner's Hotel was a very liberal one for Harry Fox or not. I do not know whether I expressed myself at the Skinner Hotel meeting that Mr. Crane was acting very liberally or fairly by Harry Fox or not; I do not know that there was any expression in regard to that.

Q. How did it come that when Crane proposed to withdraw his bid for forty thousand dollars, and let you bid less, that that was not acceded to? Who objected to that, if anybody?

A. I did.

Q. What was the ground of your objection?

A. Because I thought the property — that in that arrangement the property was worth that, to us.

The ultimate arrangement made at Skinner's Hotel was that it was optional with us whether we should take his dredge, or whether we should give him a quarter interest in the company, and the company buy his dredge or not; the bid was to remain the same as it was. We made a positive, definite arrangement, as stated, so far as we could make such an arrangement verbally; it was agreed to all around; Mr. Crane, Mr. Carkin, and myself agreed to it; Harry Fox did not have anything to do with it.

Q. What was his — Harry Fox's — interest in the matter? How did it come that he was the man who sent for you, came for you on the train, and took you over there, and talked to you about this matter?

A. Mr. Fox expects ultimately to buy an interest in that property, I suppose.

Q. Didn't you say there at that interview that you came to help Harry Fox? Didn't you tell Mr. Crane that? Stated that in that conversation?

A. I think that was very likely, if I would have taken this thing up, except a part of it. I would have taken a part of the property without that.

Q. Were you not taking the whole of it to help Harry Fox? Wasn't that the idea? Wasn't that what you stated?

A. I do not remember of stating it.

Q. Well, wasn't that the truth?

A. Yes; in a measure it is.

Q. Didn't you state that you had enough dredge property of your own up there in Wisconsin?

A. I have enough for that section.

Q. That this was a matter of helping Harry Fox; didn't you say that?

A. Perhaps I did; I do not remember it. I should think Mr. Crane expressed himself at the interview, that he would be willing to help Harry Fox, if he could. I do not remember about that particularly.

Q. Wasn't it the idea that you would put in this money for the purpose of helping Harry Fox, and take this property on this forty thousand dollar bid?

A. Well, partly. The reason that I took an interest in Harry Fox was, that Mr. Fox and I were on intimate relations for several years, and had borrowed and lent property backward and forward, and it had been an advantage I think, to both of us. I knew Harry Fox didn't have any money. I supposed he didn't.

Q. Havn't you stated since the first day of July, that you were willing to help Harry Fox in the matter of taking this dredge property, to the extent of thirty thousand dollars?

A. I do not remember that I have.

Q. Well, do you remember that you have not? Can you swear that you have not, positively?

A. I have no recollection of making such a statement.

Q. Wouldn't you have done it?

Objected to.

A. No; I don't think I would have gone to that extent.

Q. Well, twenty-five thousand dollars?

A. I might have gone fifteen — ten or fifteen. I have no recollection of stating to Hodgkins and Miller, at my house, at that interview, that I would help Harry Fox to the extent of thirty thousand dollars.

Q. Do you swear you did not? You have been stating the conversation with the other parties; could you swear you did not state that?

A. I have stated the conversation, as near as I can remember.

Q. Do you swear you did not state that?

A. I would not say that, sir.

Q. These gentlemen have both sworn to that in this case, and I want to know whether you swear you did state that or not?

By Mr. Stiles. Objected to stating to what some other witness has sworn to.

A. I tell you I have no recollection of having made such a statement.

Q. Well, can you swear that you cannot?

A. I cannot swear that I did, and of course I cannot swear that I did not.

Q. Mr. Conro, you stated it as a fact that shortly before the first of June, you received from Harry Fox, from the sale of certain of Harry Fox's property, about thirty thousand dollars?

A. No, sir.

Q. Is that true?

A. No, sir.

Q. Didn't you receive a large amount of money, upwards of twenty thousand dollars?

A. No.

Q. Didn't you receive commercial paper, which was given in payment for a livery stable, sold by Harry Fox, this year?

A. I negotiated some for him.

Q. Who got the proceeds?

A. Fox.

Q. Was all of it paid over to Fox?

A. Yes, sir.

Q. Any of it find its way back to your hands again?

A. I have not got any of it, sir.

Q. Any of it find its way back into your hands again, after you gave it to Fox?

A. I have not got it.

Q. Have you had it?

A. No.

The continuance of the witnesses examination adjourned until October 4, 1875.

Continuation of Cross-Examination of Albert Conro, October 12th.

Have brought with me, in obedience to the subpœna, Conro, Carkin & Co.'s ledger, and Conro, Starke & Co.'s ledger.

Q. Is there any account of Harry Fox, individually, in the books of Conro, Starke & Co.?

Objected to by Mr. Stiles as not proper course of examination and as having no bearing on the question to be determined by this investigation.

A. No, I don't think there is. Witness says books are here for examination and he does not think there is any account with Harry Fox; there is no account in my individual ledger with Harry Fox; there is an account in some of the books brought here by me with Harry Fox; there is an account in Conro, Carkin & Co.'s books with Harry Fox; the books will show themselves when they were opened; I think they were opened about the 12th or 14th of July of this year.

Q. Whereabouts in your individual books was the account with Harry Fox, which culminated in an indebtedness against him, and in your favor, of some twenty-five thousand dollars, which you have testified to the other day, kept?

A. There is no account in the book at all, no book account of it.

Q. The books that you have here will show nothing?

A. No, sir, the books will show nothing; I supposed there were some transaction, but it appears it was done in another way; the transaction was in memorandum receipts and due bills; when that transaction culminated, those were

surrendered and a note given for what I was to advance besides to make up the twenty-five thousand dollars.

Witness produces the note, which is as follows:

[Form No. 64.]

$25,000.00. CHICAGO, April 24th, 1875.

Five years after date, for value received, I promise to pay to Albert Conro the sum of twenty-five thousand dollars, at ————————, with interest at the rate of ten per cent. per annum.

(Signed) HARRY FOX.

[No. 11, *Chicago Legal News* print.]

The note was given the day it bears date; the note was drawn here, I think; Mr. Fox gave me the note; he brought it with him when he came up there; I do not remember how long before then he had been there; the settlements between me and Fox took place a day or two before the note was given, perhaps a few days; the settlement took place here; I was down here; I was here three or four times preceding the settlement, engaged in making an effort to settle this matter; I was looking it up with a view to lend him more money than what he owed me; I got security for the note, but he afterwards made a sale; it was not necessary for me to advance him the money; that note represented what witness was to furnish in addition to what Fox already owed him; that if he made a sale of some property to some parties in Boston, he would not need the money I was to advance; just about this time, Fox sold the property and superseded the necessity of my raising the balance of the money, the money that I was to advance to him, with what he already owed me, made up the twenty-five thousand dollars; he owed me between seven and eight thousand dollars.

Q. Well, where was the account of that indebtedness, that seven or eight thousand dollars, Mr. Conro?

A. It was kept in the way of—in the shape of due bills.

Q. What else?

A. Well, I think there was one or two entries made, as I suppose, simply received so much money, for money that I had loaned him.

Q. Did you never keep any account of this on your books—your personal books?

A. I did not, as it was supposed to be a temporary transaction, until it got to be pretty large. When it got to be pretty large I did not enter it on my books then; that is the only thing. Fox don't owe me that note now; he did owe me all of it at one time.

Q. He was only to owe it conditionally; provided you gave him the money, and you never gave him the money on the note; that is the extra twelve or thirteen thousand dollars; you never gave him that?

A. I did not pay him that; I gave him a check, but that check was returned and destroyed. It was just previous to the 24th of April when this thing was settled up; the negotiations between Fox and me, in which I gave him the check, and the check was returned; I have got my individual books with me; I have not got the journal; I have got my bills payable, and bills receivable book; there is nothing but that note, and the entry in bills receivable book of that note.

Q. So that then that note from Fox really owes you between seven and eight thousand dollars now?

A. He did, when that transaction took place; that seven or eight thousand dollars has been paid since; he paid from the avails of that stable — the livery stable; he did not need the money after he sold the stable; it was the livery stable that he sold; he sold the livery stable to Burnham, I think; I guess it was a little after the 24th of April that he sold the

stable; the purchase price of that stable was something in the neighborhood of thirty thousand dollars; I think it was paid in paper by Burnham; I saw some of the paper, and that was due in a year or a year and a half, and that paper I saw I sold one piece for Mr. Fox; I think I sold it to Friend Bros., some Jews in Milwaukee; that was about two thousand dollars in amount; I think I have seen two other pieces of paper, which amount to some seven or eight thousand dollars; I negotiated those in Milwaukee; I gave them to a broker to negotiate; I had, what Fox owed me, out of the proceeds, and he got the balance; I paid him the balance in Chicago; the balance I paid him was something like twelve or thirteen thousand dollars; I should have to look up some memorandums to tell definitely, that I have not got here; the reason I did not bring those memorandums with me is I could not find them; they were given at the time we settled.

Q. Why didn't you give up that note at the time of the settlement?

A. Well, that I suppose was the question; I supposed I did. The only way I could account for that was this: There were interest notes given with that, and when I took them I was boarding at the Plankinton house, and I put those notes in a tin box that I kept at the Plankinton house, in the Plankinton house safe, for convenience, and I took them up to the office to enter them, and when I surrendered the interest notes, I supposed that was with them; found it was not; I found out it was not with them when I came to look for them; my attention was called to it by Mr. Fox after I had given up the interest notes.

Q. When was it your attention was called to it and you made this search and found it?

A. Well, I cannot say.

Q. Since your examination the other day?

A. No; it was after that.

Q. Why did you state in your examination the other day that Harry Fox owed you twenty-five thousand dollars on the 5th of June?

By Mr. Stiles. He did not say that.

A. No; if I did, I didn't mean to; I meant to have stated that at the time that that was given me, he owed me that, because I fixed my means to let him have it. Dates are something; I did not understand your question, if I did say so; I did not mean to say so; I do not know that I did; what I mean to say now is, that Harry Fox did not owe me anything; he did not owe me anything on the 5th of June; I got the dates confounded. Witness shows counsel an entry on page sixteen of the ledger of Conro, Carkin & Co., which account is as follows:

The last item on the date of October 1st, 1875, of $9,123.56 is estimated from the city, city dredging. The entry should have been to Conro, Carkin & Co., instead of Harry Fox. It is not an entry that properly belongs in that acconnt. That is the only account that I know of with Harry Fox.

Q. Did you bring any letters or telegrams in accordance with the subpœna?

A. Have not any letters or telegrams in relation to this suit.

Q. What did you do with them?

A. Well, they were so unimportant when received, that they were thrown into the waste basket. I keep a letter file for anything of importance. I do not keep a file of all letters of importance. I do not keep a letter file of one in fifty. I do not keep any letter or telegram unless it pertains to a proposition or contract.

Q. Do you consider any letters or telegrams you received from these gentlemen, Carkin and Harry Fox, as unimportant?

A. Entirely so. I do not know as I have anything in particular to say as to refreshing my recollection of how I happened to come down here on Wednesday or Thursday, July 7th or 8th. It was at either Fox or Carkin's invitation that I came. It was just as likely to be Fox as Carkin; I don't know which. One of the communications was from Fox, and some from Carkin. I do not remember whether it was by letter or telegram that I came. Harry Fox met me at the depot in a buggy, and took me in the buggy directly to Skinner's hotel. Carkin was there when we got there. Crane was not there when we got there. It was perhaps half an hour before Crane came in after we got there. I could not say exactly. Fox sent after him.

Objected to as re-examination.

I don't know whether I had been informed of the object of meeting Crane, at Skinner's hotel, before I got there or not. I do not remember but Fox might have said something about it beforewe got to the hotel. I do not remember about it. I do not believe I knew anything about the bid having been put in for forty thousand dollars, and that Mr. Crane was interested in it until I reached here. I do not think I knew what I was coming down here for. I simply came because I was invited to come. My recollection is that the communication I received was to come down and meet Crane and Carkin.

Q. Didn't you know who Crane was?

A. I knew of Crane Bros. I knew their concern.

Q. And you knew that the Crane mentioned was one of the Crane Bros., that is what you supposed?

A. That is what I supposed. I do not know whether this interview was at Crane's solicitation. I do no know at whose solicitation it was. It would seem that when Crane

came in I was introduced to him as being the one who represented the Hodgkins bid. It might have been discussed in a conversation that I was the man that came down there to help Harry Fox. The interview at Skinner's hotel lasted perhaps an hour. I did not tell Mr. Crane I was anxious that he should withdraw his bid, or we put in a bid for less. It was simply suggested.

Examination objected to.

Q. Did Mr. Crane appear anxious to make the arrangement you finally made?

A. He was satisfied to make it.

Witness is asked whether Mr. Crane seemed solicitous or anxious to consumate the arrangement which was made, and says "I shall answer that question by stating he did consumate it, and I should presume he would not have done it unless he was anxious and wanted to do it. The way the forty thousand dollars was to be paid was, we were to assume the bid when we took it. That was our understanding of it. I do not think there was anything said about that. We had not got to that part yet. There was a question to be settled before we got to that part. There was not any question to be settled about the taking of the bid off his hands."

Q. Now that was an important thing as to how that was to be paid for and when! What arrangement was made?

A. We had not got to that part of it. That depended on the question as to whether we took him in, or took it ourselves. If we took him in we would have to raise three-quarters of forty thousand dollars — some thirty thousand dollars--and if we left him out, it was forty thousand dollars.

Q. Then, in either event, it was thirty thousand dollars that you would have to pay?

A. Yes, sir; there was no writing between us; but Mr.

Crane's proposition was to give us the dredge for $11,000 for one, two and three years time, at ten per cent.

Q. Did you accept that?

A. That depended on whether we took him in or whether we went on alone. If we took Crane in the company would have to pay for the dredge — have to give their paper. The company had not been named then. The company was going to be a co-partnership. If Crane went into the company, he was to assume a one-quarter interest in this eleven thousand dollars. The payment of the forty thousand dollars for the Fox & Howard property was to be arranged when we concluded which way we were to take it.

Q. How long were you to consider which of these propositions you would accept, either to leave Crane out, or leave him in?

A. Three or four days.

Q. Was there any time definitely set?

A. Well, that was the proposition, three or four days to determine it in. When we left we did not make any definite arrangement of time or place to meet again. We did not arrange as to who would let Crane know as to what our conclusion was when I left to go home. I suggested what we should do; that we should take the property at forty thousand dollars and buy Mr. Crane's dredge. Carkin was of the same opinion with me. I do not know what Fox thought of it. I do not know as he said anything about it. He did not dissent from it. That was the arrangement I understood when I went home. That was to be carried out. I am not certain whether I went home that night at nine o'clock or the next noon. If I stayed here that night, I might have stopped at Fox's house. Have my doubts as to whether I stayed or not. I cannot tell whether I went home that night or the next day. I left here with the understanding that we would accept Crane's proposition and leave him out.

Q. Now did you ever inform Crane about that; what determination you had come to, within three or four days?

A. Well, I think Mr. Crane, the next day, undertook to get up another company, as I understand it. I heard of that first on Sunday morning from Mr. Miller and Hodgkins.

Q. Were you very much surprised about it?

A. Well, yes, I was; I thought it a little strange, after making a fair trade.

Q. Well, did you ever go to Mr. Crane, or send to Mr. Crane, to express your surprise, mayhap indignation, over this?

A. No, I did not; when I left here on that Thursday or Friday, I did not instruct Mr. Carkin and Fox to tell Mr. Crane what conclusion we had come to, but proposed to carry it out; I supposed Mr. Carkin would go there himself; left that to Mr. Carkin; it was understood that we were to take the property on these terms.

Q. When you found out that Mr. Carkin had slipped in and got the property, and left Mr. Crane out in the cold, were you very much indignant at Mr. Carkin?

A. No.

Q. Felt perfectly satisfied with that business?

A. I did not care anything about it; don't know whether I told Mr. Hodgkins to see Harry Fox, when he came down to Chicago, and try to make up a slate, and see if Fox would not agree to it.

Is asked whether he swears he did not do so?

A. I do not remember of saying any such thing; my recollection about that would be that if I said anything at all, it was that if Mr. Fox and Carkin wanted to do anything that

was more satisfactory to themselves, to leave me out; I was perfectly willing; that would be what I should say; did not speak of an arrangement with Fox leaving Carkin out.

Is asked whether he can swear to it positively?

A. That is what I say; I do not think I did; that is as near as I can come to it; did not see Mr. Crane after this interview at Skinner's hotel; the first I heard from Mr. Crane was from those two gentlemen on Sunday morning.

Q. Then they came up there as representing Mr. Crane?

A. No, they did not claim to represent Mr. Crane.

Q. Then you did hear from Mr. Crane?

A. They represented to me that Mr. Crane had not any right to make the arrangement he had made with us. I do not know whom they represented. I knew they were interested in the matter with Mr. Crane, beforehand.

Q. And came up there to have an interview with you on behalf of Mr. Crane, wasn't that the understanding?

A. I never knew what there object was, and don't yet. I think they asked me if I would not put in twenty thousand dollars for Harry Fox. They did not say who sent them up there. I do not think they said they came from Mr. Crane. I do not think they said they came on Mr. Crane's behalf. The only reason I said I heard from Mr. Crane through them, was, because they talked of Mr. Crane. Says he can give the dates when he and Carkin first talked of having an interest in this Fox and Howard property. Carkin and I never had an intention of going into the Fox & Howard property, taking an interest in it, until after the advertisement for bids. That is about the time Carkin and I were bidding on the property. The arrangement between Carkin and me was not perfected of taking an interest in the Fox & Howard property when I put in the bid. It was left to be arranged if we got any property, whether

Carkin should take an interest in it. I do not think Carkin told me to put in that bid. There might have been some talk about it. Carkin told me he was going to bid on the property. I do not know how much Carkin was to bid on it. I was not here. I do not know but there might have been a conversation looking to an arrangment for turning over this property that I bid in, if I got it on that bid, to Harry Fox.

Q. Didn't you put in that bid at Fox's suggestion—solicitation?

A. Well, I think Fox had something to say to me about inducing me to put in a bid. I think Howard was the first man that said anything about it. I guess I had as much to do with selecting the articles that I should bid on as anybody. Had known more or less of the property for four or five years. Knew the condition of it pretty well. Went to the North and South branch yards a few days before the 2d of July and looked at the property. Harry Fox went with me. The proposition of Miller and Kimball was that Crane should take a ffith, Hodgkins a fifth, Miller and Kimball a fifth, and Harry Fox a fifth. I do not know who was to take the other fifth. I do not remember whether it was fifths or quarters. When Hodgkins told me he was master of the situation at my house, on Sunday, July 11th, I do not know that I made any reply to him. This reply was to something that I had said to him. He said that Mr. Crane had no right to make that arrangement. He was master of the situation. He controlled it. I did not take any steps to advise Mr. Crane of the objections which Hodgkins made to that arrangement which he had made at Skinner's hotel. This was on Sunday, and they left on Sunday night. The first thing I knew, there was a different arrangement when I came down here in the afternoon. The reason I did not telegraph to Carkin or Fox about the interview with Miller and Hodgkins was, because they gave me to understand they had made an arrangement with Mr. Fox. Telegraphed them that any arrangement they saw fit to make, to make it, and I would be down on Monday.

Q. Why didn't you telegraph Crane about this interview with Hodgkins, wherein Hodgkins said he claimed that Crane had no right to make any such arrangement as was made at Skinner's hotel?

A. Well, I don't know. I did not think of it. Did not mention or telegraph anything about the interview with Miller and Hodgkins. Conro, Starke & Co. have paid one-third, I paid one-third, and Carkin one-third of the forty thousand five hundred dollars. Witness shows Conro's stock in the Co's. Ledger, page 584.

ACCOUNT OF CHICAGO DREDGE COMPANY.

July 13th, charged with	$3,553.00	Aug. 17, By cash,	$264.84
" 14th, "	10,000.63		
" 26th, "	2,650.00		
Sundry items,	213.60		
Sept. 20, New York draft,	4,000.00		

Witness turns to page 177 of Conro's individual Ledger. The account is as follows:

CHICAGO DREDGE COMPANY.

1875. July 12. To cash, $14,543.41.

That entry refers to the journal. I did not bring the journal. I paid that money there on July 12. I brought New York drafts down with me. A part might have been drawn on Chicago. Some of the money paid went towards buying some more property from the assignee, and some towards buying a cargo of piles. Witness is asked to refer to his individual ledger, and point out the item of fourteen thousand and odd dollars paid by him on account of this property. The fourteen thousand and odd dollars does not appear on the cash or in his individual ledger at all, and says it is credited to his individual account. The witness is asked to send for his book or books of original entry, his journal, or cash book, if he keeps one, that contained the original entry of this sum

of $14,541.43, and replies that he will do so. The book called bills receivable is copied from another book by a book-keeper named James Tweedy. The individual ledger is kept by James Tweedy, and is very indifferently kept. I do not find any entry of this fourteen thousand and odd dollars paid by me on account of the purchase of this Fox & Howard property in the cash account. It is not posted. I think Harry Fox ultimately expects to buy an interest in the property. There was no arrangement made for that.

Q. Has there been any conversation between you and Harry Fox looking to any interest in the property?

A. No, there has not.

Q. Then why do you say he ultimately expects to take an interest in the property?

A. Because I expect to have him.

Q. You have never intimated that you did?

A. I expect to have him take an interest. I expect him to take such an interest in the property as he will pay for, or the business can pay for for him. I have determined upon no amount that he is to have in the property. Will not state positively that I did not say to Miller and Hodgkins in the interview at my house on Sunday, that I was willing to help Fox to the extent of thirty thousand dollars. I would not put thirty thousand dollars into a business for Harry Fox, nor for anybody, unless I had control of the business. I would not swear positively that I did not state that to Miller and Hodgkins. This is copied into the individual ledger from another book, and was done by another young man. That is the entry charging the Chicago Dredge Company on my individual ledger, and was made a few days after the 12th of July, after I had returned to Milwaukee. There had been no entries made in those books since my cross-examination the other day, in reference to this matter. It is

not arranged with me and Carkin about the earnings of this property. We have not made any assignment of any part of the property by any written document.

Q. Have you made any bill of sale for any interest in this property to Conro, Starke & Co. ?

A. I do not think that is transferred yet. I know it is not. We received a bill of sale from the assignee for the property. It was a formal bill of sale. Carkin has it in his safe. I can get the bill of sale for you if you want it. I have never seen it but once. I think I first saw it on the 13th of July. Have no interest in any property in this state, other than the Fox & Howard property, except an interest in some property subsequently purchased, and valued from five to six thousand dollars. I have not any property in this state other than that, and my interest in the Fox & Howard property. Have no credits in this state other than the earnings of this property. Conro, Carkin & Company get the earnings of this property now. I have received profits, ten or twelve thousand dollars, as the whole earnings. The reason why the nine thousand and odd dollars from the city of Chicago is credited to Harry Fox was, because he had not yet drawn the contracts which he was to do, and is to do. Archie Northrop keeps the books of Conro, Carkin & Co. The item of $9,123.57 on page 16 of the ledger of Conro, Carkin & Co., in Harry Fox's account crediting him with that amount, represents money collected for dredging, from the city of Chicago, and is credited Harry Fox on the ledger. That is a mistake. The reason he knows it is a mistake is, because that money belongs to Conro, Carkin & Co. The amount as received from the city of Chicago was received in vouchers, and vouchers were sold and proceeds paid into the office of Conro, Carkin & Co. Money was paid out for labor and material. Do not know whether it has all been paid out or not. Think Conro, Carkin & Co. kept their bank account in the First National Bank. Harry Fox did not get any of that nine thousand and odd dollars.

Witness is asked on the continuance of his cross-examina-

tion to bring up his original books of entry of Conro, Carkin & Co., and answers that he will. Witness is asked to give an account on the ledger of Conro, Carkin & Co., with Bradford Hancock on page 417, which account is as follows:

BRADFORD HANCOCK.

Aug. 30, To cash,	2,	$ 821.89	Aug. 1, By sund.,	3,	$3,919.84
Oct. 1, To cash,	6,	3,919.84	Aug. 4,	3,	700.00
			Aug. 26,	3,	121.89
			Sept. 8, Docking,	5,	54.91
			Sept. 20, "	7,	43.80
			Sept. 23, "	7,	262.13
			In pencil,	5,	5,102.57

Witness is asked to turn to Harry Fox's account in the ledger of Conro, Carkin & Co., which he does, and said account is as follows:

HARRY FOX.

Aug. 7, To cash,	1,	$200.00	July 29, By cash,	1,	$ 10.00
Aug. 17, To cash,	1,	11.75	Aug. 1, By Chi. City,	2,	160.71
Sept. 15, To cash,	5,	30.00	Aug. 21, Cash,	1,	6.05
Sept. 24, To cash,	5,	7.16	Aug. 26, Cash,	2,	608.23
			Sept. 20, W. J. Carkin,	7,	200.00
			Oct. 1, Chi. City,	7,	9,123.57

We have never divided any of the profits of this property. I do not know how much we have on hand now. Am not charged in Conro, Carkin & Co.'s ledger with any money received from the business, because I have not received any. I do not mean to be understood that I have received one cent of money. Witness is asked to show the account of Conro, Starke & Company, on Conro, Carkin & Co.'s ledger, which he does, and the account is as follows:

CONRO, STARKE & COMPANY.

Aug. 1, To cap. stk. 3,	$52,800.00	Aug. 1, By cap. stk. 1,	$13,500.00
Aug. 10, To cash, 4,	5.00	Sept. 7, By cash, 2,	528.00
		Oct. 1, By cash, 6,	4,000.00

Examination adjourned until 4 o'clock P. M., Wednesday, Oct. 13, 1875.

Cross-examination continued by John S. Cooper, Esq., on behalf of petitioners, on Wednesday, Oct. 13, 1875.

I sent for the book containing the original entry of that sum of upwards of fourteen thousand dollars, charged on my individual ledger to the Chicago Dredging Company; sent for it yesterday, during my examination; have received in answer to my request for the book a book that was originally started as a journal; it is not a book that is in current use now; the last entry in this book was in 1873; the young man has sent the wrong book. The young man sent a note along with this book, in which he says Mr. Conro's journalizing has been done in the new day-book since he took hold of the books. The young man who sent this note and book is J. F. Tweedy, the book-keeper. He also says in the note that I have the day-book on here. The journal that he sent down went out of use in 1873. There is another book which contains the original entries, but it is not here. That is the one I sent for. I have not seen that journal since I took it home from here; that was on my second examination here — the continuance of my cross-examination. I had the book here at that time. After the adjournment of my examination the first time, I took the books home with me, and this journal was amongst them. I saw the entry of this fourteen thousand and odd dollars in that journal, and it is not here. Mr. Tweedy made the entry. The item was entered as cash, charged to the credit of bills receivable, in the journal. I directed the book-keeper to do it myself. My individual books are posted very irregularly. If they had been, this contract would have appeared on the cash

account of the ledger. Witness is asked to look at the ledger, and see to how late a date it has been posted. It appears on the ledger just as it appears on the journal. It appears posted to July 12.

Q. I wish you would look on this ledger, Mr. Conro, (indicating the individual ledger, the ledger Mr. Conro produced on the examination,) and see whether there is any later entries on the ledger of cash account than March, 1873?

A. There don't seem to be.

There are entries in the ledger in 1875 on the account of Conro, Starke & Company, and in the bills receivable account part of the entries are in the handwriting of Tweedy and part in the writing of a man named Kellogg. I think the ledger does not show any entry of the proceeds of the notes of Harry Fox. The reason is the transaction was simply as a broker. Before I took this twenty-five thousand dollar note, I had notes or due bills representing six, seven or eight thousand dollars Fox owed me. I gave them up to Harry Fox. Those notes do not appear in my ledger on the bills receivable account. The reason is it was one of those transactions I expected to fix from day to day, and from month to month. But they were not exactly notes, they were simply due bills, not in the form of bills receivable. Same were "received so and so." They represented money, and there are a great many other notes that are not on here at all. I have one in my pocket, that I took last January, that is not on there. There are a great many things not entered on the books at all. I generally aim to make such entries of cash where there is so large a sum as seven or eight thousand dollars appear on the books.

Q. Didn't you have your book, from which this ledger is posted, kept along from month to month, as the transactions occur?

A. They are not always entered on the book, all the transactions. A great many money transactions are memorandums

in my memorandum book, or a slip of paper, and kept in my wallet, and when I think of them I have them entered; and if I do not, they lay until I do think of it. The indebtedness against Harry Fox commenced running soon after the fire. Sometimes I hadn't anything but memorandums for it. I gave the money I received on the notes to Harry Fox, in the neighborhood of sixteen thousand dollars. That sixteen thousand dollars was all I received. Fox paid me the indebtedness of seven or eight thousand dollars afterwards; did not pay it to me out of this sixteen thousand dollars. Deposited that seven or eight thousand dollars in the bank; it went into my general bank account; kept that at the Manufacturers' Bank, in Milwaukee. My check book shows me moneys received and moneys paid out through the bank, as kept in my office. About half of the checks I make, I make outside. I generally make a return of these to the bookkeeper, so he may know how the bank account stands.

Q. How does it come, that these, if deposited in the bank, there is no memorandum of it made in the cash, or in the books at all?

A. It might have been that several other items were deposited in the bank at the same time.

Q. Then the aggregate will embrace this?

A. Yes, sir.

Q. Now, is the aggregate shown there, anywhere?

A. Well, this cash account don't seem to be posted up. I do not think there is any account of this in the bills receivable. It is not posted up so late. The bills receivable is posted up to May 1, 1875; I should think this time that I got this money was after May 1st. I know there is no entry made of this money in the bills payable account, or bills payable book, because it is not the proper place for it. (Witness turns to bills receivable account during the months of April and May, 1875; witness reads the entry under date of April 24, which is as fol-

lows:) "April 24; Harry Fox; five years; twenty-five thousand dollars; real estate; ten per cent." Did not pay Harry Fox that sixteen thousand dollars by check; paid him in currency; paid it to him in Milwaukee, at the bank; he took the currency away with him. The sixteen thousand dollars mentioned was all the money that I have received this year from Harry Fox or any other person or persons on his account. Fox told me he intended to use the balance of the purchase money of the livery stable to pay his debts with.

By agreement between counsel for Conro & Carkin and the petitioners, the testimony in the above entitled matter is considered as closed.

DEPOSITION OF BRADFORD HANCOCK,

SEPTEMBER 23 AND 24, 1875.

First saw Jefferson Hodgkins after I advertised for bids for the property, which was about the 22d of June. Two or three days after I had advertised, Hodgkins came in and got a memorandum of the property, and I gave him a printed slip; gave him the information he was after. Next saw him a day or two before the bids were to be opened, about the first day of July. He came in the day the bids were to be opened; don't remember any conversation that occurred at that time. About half a dozen bids had been put in at this time, which were sealed. There were thirteen bids in all received. Hale and Ayer, Albert Conro, and Miller and Kimball put in bids, all of which were for parts of the property, except that of Hale and Ayer, and that was for thirty thousand three hundred dollars. Hodgkins bid for a specified part; the amount of Hodgkins' first bid was a little over thirteen thousand dollars. Hodgkins came with the bid to my office, and my impression is, Miller and Kimball were with him; there were several parties in at that time.

I didn't have any particular talk with Hodgkins at the time he handed in that bid on the first of July. There was no mention made of Crane or any body else being connected with that bid at the time it was handed in. I took all the bids into court to Judge Blodgett, at half past nine o'clock on the morning of July 1st; left my office at that time. Judge Blodgett opened the bids himself. Hodgkins was there, and Miller and Kimball were there; I don't remember whether Hale and Ayer were there or not; quite a number were there. I made a memorandum of the bids. Judge Blodgett handed the bids to me, and told me to make a report. I took them back to my office with me.

Next saw Mr. Hodgkins at my office, about two o'clock, and told him I was going to recommend his bid. Mr. Hale came in with him, and seemed anxious I should take his bid; claimed it was the highest. I told him the aggregate of all the bids was thirty-four thousand, and his was only thirty thousand three hundred. Next saw Hodgkins again, about three o'clock. I had taken all the bids over to Mr. Flower's office, on the opposite side of the street. Mr. Hodgkins and Mr. John Ayer came in. Mr. Ayer insisted that his bid was the best, but I told Mr. Hodgkins I would recommend his bid. Hodgkins said he wouldn't take the property on his bid, and I told him that if he wouldn't take the property on his bid, I would make out a report, asking for a sale of the property on his bid, and if he didn't take it, I would sell to somebody else. Mr. Ayer insisted that, as the Hodgkins bid had been withdrawn, his bid was the highest, and that I should recommend the sale to him. I told Ayer, that if he would put in a bid for forty thousand dollars, for all the property, I would recommend his bid; he didn't say anything to that; they went off together. Soon after they went off, Mr. McBean came in—the sandy complexioned McBean; it was the one that met me on the stair; I think his name was Duncan. I told him that Mr. Hodgkins and Mr. Ayer had just left; that Hodgkins had declined to take the property on his bid, and that I was going to report to the court, asking an order

of sale, at that price, and sell to somebody else. McBean said he would take the property at that price. I told him, also, that Mr. Ayer was anxious to take the property, on his bid of $30,300; he thought that was too cheap. I told him I was going to report a confirmation of the sale to Hodgkins, and two or three others, and the balance I told him I was going to recommend should be sold at private sale to other parties; he said he would take the property at the price Hodgkins had bid, if Hodgkins wouldn't take it.

Q. You have heard that man testify that you told him that Crane was backing up Hodgkin's bid, or something of that sort, here. I want you to scratch your head, and think diligently, and say if there was a word of truth in it?

A. I don't need to scratch my head. I say there was not a word of truth in it. I didn't say anything to him about Crane, or him to me. This was before the forty thousand dollar bid had been put in or talked of. Mr. Hodgkins, and I think Mr. Miller with him, came to my office and got a copy of the list of the property, with a view, as I understood it, of putting in a bid for forty thousand dollars. That was Friday evening, July the 1st, and I told them how I wanted it put in—setting the price opposite each dredge and pile driver—making an aggregate, for the whole, of forty thousand dollars, if that was the aggregate they wanted to put in. I don't believe there were any names mentioned, at that time, as to who was going to put in this bid of forty thousand dollars. I am not positive whether it was Miller or Hodgkins that came in and got the list that I had. The next occasion that I saw Hodgkins was on the following morning—Saturday, I think. Mr. Hodgkins then brought in the bid. My impression is Mr. Kimball came in with him, but I am uncertain whether Mr. Miller was with him or Mr. Besley. They handed in the bid. I took it, and looked it over; told them it wasn't as I wanted it; that it didn't specify the price opposite each article. I don't recollect that they made any reply to that. There were no changes made in it there. Not a word was said in

regard to Mr. Crane. I am positive that there was no word to me, or in my hearing, about Mr. Crane, in such a way as to call my attention to it at all. They were talking amongst themselves there in the office. While they were in the room, I was looking over their bid. I wanted them to specify the price of each article, so that if anybody claimed any liens on it I would know what it brought. That was the reason why I desired the bid made, to specify the amount of each article. They went off and left the bid there. They were in the office perhaps five minutes.

I next saw Mr. Hodgkins about one o'clock the same day; it was at Mr. Flower's desk, over at Tenney, Flower and Abercrombie's office; he wanted to know what I was going to do with his bid—if I was going to recommend it. I told him no, unless he made the changes that I wanted; in reply to that, he showed me a letter, which letter I attached to my deposition, marked "Exhibit A." I told Hodgkins that wasn't satisfactory quite; and Mr. Flower wanted to know if it couldn't be arranged so as to make the bid satisfactory, when we had it there. We agreed to alter it and strike out the portion that was finally struck out, and it was finally struck out, then and there. I had got my report all ready to recommend the others, but on the doing that, I told him I would file a supplementary report recommending this bid of forty thousand dollars upon the bid as then altered. Hodgkins left, and Flower went on and wrote my reports. Nothing had been said up to that time, about Crane.

I took my reports, both of them, and came over to Judge Blodgett's room, and presented them to him; that was on Friday, July the 2d. I submitted my reports to Judge Blodgett, and he entered a rule that the creditors should show cause by July ninth, why the bid should not be confirmed. Mr. Hodgkins and Mr. Hale's attorney, Swezey, came into the room soon after I did, into Judge Blodgett's room, or were in the room at that time, and they asked that the property be turned over to Mr. Hodgkins. The court said he would leave that matter entirely to the assignee. He afterwards told me, that

as the bankrupts were under the control of the court all the time, perhaps had better let the property be where it was, at present. I gave the notice as directed: that Friday night I went to Wisconsin and didn't return until the next Tuesday.

I saw Hodgkins once afterwards, before the ninth, at my office; Mr. Hale was in there with him; I don't know whether he came with him or not. Mr. Hale asked him if he didn't want him to furnish part of the money, and Mr. Hodgkins said no, he had all the money he wanted. (Referring to memorandum.) On July ninth I came to the clerk's office, and took an objection that was filed in the case, by Walker, and took it into Judge Blodgett's room; I told the Judge that I thought that was simply to gain time, and prevent the sale; that it was for the interest of the estate to sell the property.

Q. Go on, from that.

A. He intimated to me ——

Q. I don't think you had better have much to say about what Judge Blodgett said.

A. He told me to bring in my report, and notify the other side to be there at two o'clock.

Q. Now what did you do then?

A. First I went back to my office, and I saw Mr. Hodgkins was just driving up, and told him I felt confident the sale would be confirmed to him at two o'clock, and wanted him to have the money at my office.

Q. What did he say?

A. Said he would — the money was ready.

Q. What else, after that?

A. I went and got the notices — the certified copies of the newspapers that the notices had been published in — and notified Mr. Tuley to be at the Judge's office at two o'clock.

Q. Did you go there at two o'clock?

A. Yes, sir.

Q. What was done?

A. I went there at two o'clock, and waited there two or three minutes or longer, and went over and notified Mr. Flower to come over. Mr. Tuley came in, and a gentleman having a claim against the boats, for coal, was in. He raised some objections to the sales being in. The court ordered the sale to be made; Hodgkins was not there at the time. The petition and the order were drawn and presented at the same time; I took them into the clerk's room. The order had all been drawn up, except what the court added at the bottom. I went into the clerk's office, and got the clerk to make me a certified copy, or ordered him to make it, and then went back to my office. Hodgkins was in my office after I returned from the court, and I told him the sale had been confirmed to him; this was before I had got the certified copy. He didn't stay but a minute, and went right out again, and about three o'clock I came up to the clerk's office and got a certified copy of the order. Probably had been back to my office fifteen or twenty minutes when Hodgkins and Miller came in, and Mr. Miller sat down at my right and Mr. Hodgkins at the other end of the table, and looked over the order. They read along until they came to the clause where it said that "all right, title and interest of Harry Fox and William B. Howard," and Mr. Miller said, "Then this don't convey anything but the interest of Fox & Howard." I called his attention, then, to the latter clause of the order. They read it all through and seemed to be satisfied, and went off, as I supposed, after the money; I don't recollect there was anything said about money at that time. I kept a certified copy of the order. They had just gone out when Mr. Estey came in and asked me if I had the money; I told him no, they had just gone out after the money.

The next I saw Mr. Hodgkins was that evening. I had just started to go out of my office and had got to the door,

when Mr. Hodgkins came in. Says I, "Mr. Hodgkins, where is the money?" He says, "It is all right—I will bring you the money in the morning, but don't say anything to Mr. Miller about it." I don't recollect anything more being said about it at the time we went into the office. Whether Mr. Hodgkins asked me at that time whether I would rent the yard to him; he did at some time, either then or before the sale was confirmed. He didn't give me any reason why he didn't want me to say anything to Mr. Miller about it; he didn't say where he was going to get the money, and didn't say anything as to anybody else being interested in the bid. He came in the next morning, Saturday morning, about ten o'clock; he wanted I should go down to Calumet with him; I told him I wouldn't go a rod until I got the money; he wanted to look at the property down there. I asked him when he first came in where the money was; I don't know whether he said it at that time, but he said it before he went out, that he would bring the money at twelve o'clock. He wanted me to go down to Calumet with him that morning; he finally said he would bring the money at twelve o'clock, and we could take the afternoon train — reciting what trains were going. I told him if he didn't pay me I would sell the property to somebody else — "wigglers in the water." He said, "all right — sell it; if anybody else will give any more let them have it." That was the first time in the sale that the expression, "wigglers in the water," was used, I think. I waited until two o'clock and Mr. Hodgkins didn't come, and I took the order and went over to Miller & Kimball's office, and told Mr. Thomas that I was going over to Miller & Kimball's office to find Hodgkins.

Q. Follow yourself down there.

A. I went there and went in; saw Mr. Kimball and another gentleman sitting there. I inquired for Mr. Hodgkins. Mr. Kimball said he didn't know where he was. I told him if he wanted that property he must bring me the money on it—there was "wigglers in the water." I passed him the order,

and he took the order and looked it over. Says he, "you must see Mr. Hodgkins." Says I, "where will I find him?" He went on and told me where I would find him.

Q. Where did he say?

A. He said I would find him over at Mr. Crane's office, corner of Canal and Washington, and passed the order to me, and I left. I never had known before where Hodgkins' headquarters were, and went to Miller & Kimball's office to find him.

Q. Had you ever known before what business he was engaged in, or anything particular about him?

A. I had just looked that day in the directory to find what his business was. The directory said he was a dredger. I began to get a little alarmed about the bid, and so commenced looking it up. All that was said about Mr. Crane at Miller & Kimball's office was, that I would find Hodgkins at Crane's office. Nothing further was said about Mr. Crane's connection with the matter. I am sure of that. Mr. Kimball was in the office with another young man—the same young man that has testified here. Nothing was said at Miller & Kimball's office about that being a *bona fide* bid or a straight bid. I was in Miller & Kimball's office just long enough to leave the order and ask two or three questions. I don't recollect that Kimball made any comments on the style of the order. I started to find Mr. Hodgkins, and got down to the foot of the stairs, and met Mr. Miller; I repeated to him substantially the same I did up stairs, that if they wanted that property they must pay me the money. "There was wigglers in the water." I wanted to impress on them that something had got to be done right away. He said I must find Mr. Hodgkins, and told me where I would find him; in fact, before we got through talking, I saw Mr. Hodgkins coming in his buggy, and left Mr. Miller pretty abruptly and went down to see Mr. Hodgkins. I told Hodgkins I wanted the money; I told him if he didn't pay me I would sell the property to somebody else; and he said he would

get the money for me before three o'clock. I should think this was about quarter past two. Finally he said "Get into the buggy and go over to Mr. Crane's office with me; he is to furnish a portion of the money." I got in and went over there with him. I told Hodgkins if he didn't pay me I would sell the property to somebody else; he said "All you are afraid of is, I ain't going to take the property; somebody has been telling you I won't take it." I got into the buggy, and we went over to Crane's office; he didn't say anything about Crane having an interest in the bid, or about his having bid for Crane. I didn't know at that time he was in Crane's employ; he told me Crane was to furnish a portion of the money.

Q. What did he want you to go over to Crane's office for?

A. Well, I don't know; we went for the money. I supposed he was going to get some money of Crane and give it to me. We went to Crane's office, and went in and asked the man in the office where Mr. Crane was, and he said he didn't know. (After a pause.) I am trying to think whether I passed the order to the man, or whether Hodgkins did. I asked the man if he knew anything about Mr. Crane's furnishing money, and he said he didn't know anything about it. I passed the order to Mr. Hodgkins and Mr. Hodgkins passed it to the man.

Q. He looked over it to see what it was about?

A. Yes, sir; and glancing over the order, he stepped out to the end of the desk, looked over the order, and passed it back.

Q. What did he say in regard to knowing anything about it?

A. He didn't seem to know anything about it. I got the impression from what he said, he didn't know anything about it. We were probably talking with that man only a minute, or two minutes.

Q. Was the business opened and talked of at all, as to what this was about, and whether Crane was going to furnish money?

A. No, sir; I simply asked him if he knew anything about Crane's furnishing the money, and he said he didn't know anything about it.

Q. He didn't know anything about the business at all?

A. He didn't seem to know anything about the business. We went into the back room then.

Q. Be careful, and see if you or Hodgkins talked with him about the nature of the business; about the bid being *bona fide*, or about the money being paid, or Crane's responsibility?

A. No, sir; nothing of that kind was said. This man who was there, was a sandy complexioned man, with side whiskers. I saw the man in Crane's office, distinctly; I only saw the man as he stepped out at the end of the desk; I know he had the appearance of an Englishman, with a florid complexion and side, bushy whiskers. I thought I saw Mr. Woodbury on the stand here.

Q. Now, I ask you if Mr. Woodbury, according to your best kowledge and belief, is the man you saw there on that occasion?

A. I don't think I ever saw him until I saw him here on the stand. I don't think he was the man that was there; don't look to me like the man. I didn't have any such conversation with the man standing at the desk, as Mr. Woodbury has described. The impression I got, was, that the man I talked with, didn't know anything about the business at all—just as he said; that he didn't know whether Crane was going to furnish the money or not. I have a fair recollection of persons and faces. This was Saturday, the tenth of July (referring to memorandum); I am confident that it was Satur-

day; the reason I think so is, that I left my office at two o'clock, and went over to Miller and Kimball's office, and went directly from there, to Crane's office.

Q. Have you any memorandum you made that day?

A. I have a memorandum I make every morning; it was made the next morning.

Q. Have you got the memorandum you made the next morning?

A. Yes.

Q. State whether you have made a memorandum of this transaction about the time this happened? when it was, with reference to this transaction, and how long afterwards that you made a written memorandum of it?

A. Well, I made simply, a general memorandum, the same as I make of every day. I have kept a memorandum for the last fifteen years.

Q. Well, did you make some kind of a memorandum, in reference to this thing?

A. Yes, sir.

Q. When?

A. Probably made on the following morning. I generally make my minutes every morning.

Q. Well, have you, now, before you, a memorandum which you then made?

A. I have a memorandum that I probably made the next morning.

Q. Now, on refreshing your memory from that memorandum, what do you say, as to being certain that this was Saturday that you were over there?

A. I say it was Saturday.

Q. Does that memorandum show it?

A. It don't say I went over there Saturday.

Q. Can you say now, and how positive are you, as to what you say as to your having seen Woodbury before he testified here?

A. I say I don't think I ever saw him before; I don't think he is the man at all that was in the office there. Hodgkins and I were in the back room nearly half an hour; I think there was somebody came in and out the front office during the time we were in the back room. I left the order with Mr. Hodgkins right at the middle door, and told him I wouldn't wait any longer. Didn't have any talk with anybody standing at the desk, purporting to be book-keeper. When we were in the back room we didn't have any talk about Crane's relations to this bid, or anything about the bid; we were talking about the manufacturing and bagging, etc. After we got through, I went away and parted with Hodgkins right at the middle door. I took the cars and came home. I left Hodgkins there, as I supposed, to wait until Mr. Crane came in, and to bring up some money; that is what I left him there for. I came back to my office from there. I had been in my office but a short time when Mr. Estey and Mr. McBean came in to inquire whether I had got my money or not; Mr. McBean expressed some dissatisfaction and wanted to know whether I had got the money; I don't recollect as Mr. McBean said that this was a straw bid; he seemed to be dissatisfied that the thing was all gone up; we wasn't going to get the money.

Q. Well, what next?

A. I waited for Mr. Hodgkins to come in until about nearly 5 o'clock; he didn't come, and I took the cars and went back to Mr. Crane's office; went in and asked if Mr. Crane was there, and Mr. Crane stepped up and said that was his

name, and I told him who I was; told him I had understood he was to furnish some of the money—some of the purchase money for Fox & Howard.

Q. Fox & Howard, or for the bid?

A. For the bid.

Q. Put in by this Hodgkins for the Fox & Howard property?

A. Yes, sir.

By Mr. Cooper. Let the witness tell the story, he is an intelligent man.

By Mr. Tenney. Yes, sir; but I want him to be careful and particular.

A. I think he said it was a *bona fide* bid, and would be carried out; said there was a company being formed, which, when organized, would harmonize the entire dredge interest. Mr. Fox was to be one of the company; Mr. Hodgkins and Mr. Miller had gone to Milwaukee to see Mr. Conro, to see how much he would put in. I told him that was all very well; but here was a sale of $40,000, and I hadn't been able to get even a deposit on it. "Well," he says, "I will see that you have a deposit the first thing Monday morning." I told him this property was scattered around, and liable to be lost, and so on; and who would stand the loss? He said he didn't know anything about that.

Q. Well, is that all?

A. I think that is substantially all that was said at that time.

Q. Did he say anything in regard to this being his bid?

A. No, sir, he did not.

Q. Did he say anything in regard to Hodgkins having bid for him?

A. No, sir.

Q. Did he say anything in regard to backing up Hodgkins?

A. No, sir.

Q. Did he say anything in that interview by which you supposed that he was the bidder and responsible for the bid that had been made?

A. He did not. The impression I got was that the interest he took in it was for the benefit of others.

By Mr. Cooper. I object to impression. I want to know what was said, and let the court judge of impressions.

By Mr. Tenney. When he said he would see you got a deposit on Monday morning, what reply did you make to that?

A. I didn't make any.

Q. Did you make any agreement to wait until Monday morning?

A. No; I did not. That was a voluntary proposition on his part, and I didn't consider it was anyways binding for him to bring the money, and I didn't think he would if this company wasn't organized.

Q. Was there anything else material took place while you were there?

A. No, sir, it don't occur to me that there was. I was in Mr. Crane's office five minutes, probably ten, and we left his office together; we walked along on the street up to Skinner's hotel. I don't know as I could tell you exactly what occurred in the office and what occurred on the street. I didn't know at that time that Hodgkins was in his employ. I

came back to my office and talked with Mr. Thomas about getting up a company; he said he would go in, if there was anything to be made, and buy this property; we would organize a company and buy this property. That was the Thomas that testified here.

Q. Was that a real business proposition, or a joking one?

A. My idea about getting up the company was to force Mr. Hodgkins to take the property. I thought there was a good deal of doubt about his taking it, and thought if I could get up a counter-irritation somewhere, I might force him to take the property. That was my idea about it.

Q. Now, what was your actual belief from all that had transpired, up to the time you left Crane and got back to your office, as to this being a *bona fide* bid, and the certainty or prospect that the money would be forthcoming?

A. My idea was, it depended entirely on whether they raised a company or not, whether I got any money.

Q. Well, as to the—

A. I didn't think Mr. Crane had any particular interest in it, from what he told me, from the conversation, as I said before, only to assist some other parties.

Q. As to his paying the money on Monday morning, or as to seeing you got a deposit, what amount of confidence had you in that?

A. I thought if the company was organized all right, I would probably get it. It was a voluntary proposition on his part, and I didn't consider he was under any obligations to bring the money. After I got back to the office, I made up my mind that the question whether I got my money depended altogether on the formation of the company. That evening I saw Mr. Anson Fox; I am not positive whether it

was that evening, or that afternoon when I first got back from Mr. Crane's, I told him to find another buyer for that property if he could. I requested him to find another buyer because I had my doubts about this thing going off. I think this was after I had parted from Crane that evening. The only other parties I saw in connection with this matter until Monday morning was Mr. Fox and Mr. Carkin, on Sunday evening; it was not definitely arranged that they were to put in a bid on that Sunday evening. Mr. Carkin told me he had learned from Mr. Anson Fox that the property was for sale. I told him that higher bids were in order. He said he would give forty thousand five hundred dollars for the property. I told him if he would put me in a bid of forty thousand five hundred dollars—a written bid—put up ten or fifteen thousand dollars with it, take the property where it lay, pay the custodian fee or charges, or whatever there was on it, I would submit the matter to the court.

Q. What did he say?

A. Well, he did'nt say whether he would or he wouldn't; said he would let me know in the morning. Told him if he would put in that bid for forty thousand five hundred dollars, and put up fifteen hundred dollars, I would ask the court to vacate the sale, and if he and Hodgkins wanted to make any higher bids, all right. He said he wouldn't do it; he said the only way he would make a bid on that property was to have it—to have the bid presented to the court; he wouldn't bid if there was any competition; he would give so much; but wouldn't do anything more to have the sale vacated. He wanted, when I asked to have the sale of Hodgkins vacated, to have the sale to him confirmed; he said he wouldn't make an offer unless I would ask to have the sale confirmed. He said if he concluded to do so he would be around to my office in the morning before ten o'clock. I told him the court went on the bench at ten o'clock, and I would have to get there before ten o'clock, or otherwise we wouldn't get to the court before one. He said if he concluded to put in a bid of that kind, he would be around there, before ten o'clock. He came around, the next

morning, before ten o'clock—I guess, about half past nine, but perhaps later—and brought in a bid. I told him to bring in his bid, including the property in the Hodgkins' bid—nothing more nor less. He brought down a bid, and a certified check for fifteen thousand five hundred dollars. I went up, then, to see Judge Blodgett, stated the situation of the matter to him, and told him that Hodgkins had not paid us; that I had asked him, repeatedly, and that I had got a better offer. I asked him if he would enter an order, vacating the sale to Hodgkins, and confirming the sale to Conro & Carkin, and he told me to sell the property to the next person, if Hodgkins had not paid for it. At that I left him.

Examination continued on September 24.

After I had the interview with Judge Blodgett, on Monday morning, I went back to my office, and told Mr. Carkin I would make the sale to him, if he paid the money, and he said he would have the balance of the money at twelve o'clock. He had, already, given me a certified check for fifteen thousand five hundred dollars; he paid me that when he handed me the bid. Carkin then went off, and came back at ten, or half-past ten, and said that he could get the money before twelve o'clock. About half-past ten, I think, he came in with the money—the other check.

I went over to Mr. Tenney's office and got Mr. Abercrombie to draw up the order, or rather, petition, asking the court to set aside the former sale, and confirm the sale to Conro and Carkin—they to recognize the interest of Anson Fox and take the property where it was. With that petition I went back to the court. When those were drawn up, I took the petition, the two checks, one for fifteen thousand five hundred, and the other for twenty-five thousand, and went over to the court; nobody went with me. This was about eleven o'clock. I presented the papers to the court, and thereupon the court entered the order. I took the papers into the clerk's office, left the money with the clerk, took a receipt for it, and went back to my office. It was probably twenty minutes past

eleven when I got back to my office, and I found there Hodgkins, Mr. Skinner, Mr. Webster, and Dr. Thomas. When I came in, I said, "Hello, Mr. Hodgkins, I thought you had deserted." "No," he said. Said he, "Mr. Crane will be here pretty soon to make a deposit." Says I, "Mr. Hodgkins, when will you pay the balance." Said he, "In a few days." Said I, "What do you understand about that tug 'Hewitt,' and Anson Fox's one-third?" "If Mr. Anson Fox had any claim on it he must follow the proceeds into court." Said I, "Mr. Hodgkins, you will admit that you agreed to pay me the money, Friday, at two o'clock, Friday evening, Saturday morning, Saturday, at twelve o'clock, Saturday, at three o'clock, and I told you if you didn't pay I would sell to somebody else; you said I might if I could." He said "Yes, that was so." Says I, "I have sold the property, and got the money for it."

Q. What did he say then? Was that before Crane came in?.

A. Yes, Sir. My impression is, he said I couldn't sell it. Four or five minutes after that, Crane came in. Mr. Crane and Mr. Miller came in, and said "good morning." Mr. Crane said he had come in to make a deposit for the property. I told him he was too late, I had sold the property. He said, "Here is two checks for ten thousand dollars, each." I took them in my hand and looked at them; he made some remark about one of them being the cashier's check, or payable to order, I believe, and not endorsed. I told him it was all right, but it was too late, the property was sold. He wanted to know if he didn't say he would come in that morning, and make a deposit, and some one came in just at that time, and I think I didn't make him any answer. Somebody came in and asked me about a dividend in some other case.

Q. Was there anything said about the morning having already passed, or anything of that kind?

A. I don't think there was at that time.

Mr. Crane wanted to know what he could do about it; I

don't recollect whether he said anything about going to see Judge Blodgett about it, at that time. I think Hodgkins stayed in when Crane went out; I think he was in there afterwards. I told Mr. Hodgkins if he would raise his bid and put up the money, I would go to the court with him. Hodgkins said he would give five hundred dollars more; I told him, "all right; put up the money." I wouldn't go to the court with any more bids from him without the money. We went out to the door; I went out with Hodgkins as far as the door, I think; repeated that same statement to him again — "Put up the money." Then he took me by the arm and we went around the corner; and, finally, after we went around quite a distance, I told him I wouldn't go any further — I would go back to the office; he started around, I think, to find Mr. Crane; I told him I would go back to the office. I saw Judge Blodgett, and asked him if Hodgkins would raise his bid he would open the sale. He said no; he said the other parties had paid their money. He recited another case in which they had something of the same sort, and said he made up his mind then, when a man paid his money into court, not to open the bid again. I think I saw Mr. Crane again, that day; he came into my office and wanted I should go up into Judge Blodgett's room with him. That must have been two, or half past two. I told him I would remain in my office, and if Judge Blodgett wanted to see me, he would send for me. I don't remember he said he would go and see Judge Blodgett, and I should wait there until he got back; I told him I would wait there, and he and the gentleman that was with him went out. I think I was in my office Friday afternoon, from two o'clock, all the afternoon; I don't think I went anywhere after I got that order until five o'clock. I was sitting there for a particular purpose; I expected every moment Mr. Hodgkins would be in and tender the money on that bid. I am positive I never went to Mr. Crane's office but twice. The first that I heard that Crane had anything to do with this bid, was from Mr. Hodgkins, Saturday afternoon. I had never known Mr. Crane before that time; I didn't know anything about his pecuniary standing; I knew there was such a firm as Crane

Brothers' Manufacturing Company; but whether Charles S. Crane was a member of that firm I didn't know about that. I had never seen any of them. I delivered the order of confirmation of the ninth of July to Mr. Hodgkins in Mr. Crane's store, on Saturday, the tenth day of July. I had shown it to Hodgkins and Miller before that, and to Kimball at his office.

Witness' attention is directed to a man named James Cay, and he is asked if Cay is the man whom he saw in Crane's office on Saturday afternoon, July tenth, and witness says: "His voice sounds like the man's, but he don't look to me as being quite as heavy a man as was there. The whiskers look like the same man, but that man was little fuller faced; I am not able to say positive, whether this is the man or not."

I never told Hodgkins upon any occasion that he might have thirty or sixty days' time upon any bid that he might make.

Cross-Examination, by John S. Cooper Esq., on behalf of the Petitioner.

When I first came to Chicago, I went into the bankruptcy business; looking after bankrupts' estates; I am a brother-in-law of Mr. Flowers, of Tenneys, Flowers & Abercrombie; since I came to Chicago, I have been assignee in twenty or twenty-five estates here and elsewhere; I have been here about two years and a half; I have been receiver in ten or a dozen cases since I came to Chicago; that has been my entire business since I came to Chicago; I haven't employed my time in anything else, except attending to bankrupt estates, and my duties as receiver. Before I went into the army I was in the dry-goods business at Marshall, Dane County, Wisconsin; I have eight or ten cases pending, where I am assignee or receiver; the estates engross my time pretty well, and have a large number of creditors. I have never received a dollar on account of this Fox & Howard bankruptcy other than my commissions as assignee, nor promise of such, nor intimation of such, nor have I any expectation of such. I don't recollect of seeing

Jefferson Hodgkins but twice before July 1st. (Referring to memorandum.) My impression is that Hodgkins came in one or two days before the first of July, and handed me a bid; the the morning the bids were opened, Hodgkins came in and got the bid and took it away, and my impression is, he said he wanted to enlarge it or make some alterations in it.

My impressions are I saw Hodgkins on the first of July four times—first about nine o'clock; no one was with him. The next time was when he brought in his bid. I think there was several parties with him; I think Mr. Miller and Mr. Kimball were with him, but they were all strangers to me. The second time he came in was about quarter past nine. The next time I saw him at Tenney, Flowers & Abercrombie's office, about the middle of the afternoon; Mr. Flower, Mr. Ayer and myself were present; the next time was at my office in the evening, when he came in and got a list of the property. (Referring to memorandum.) My impression is, I saw him three times on July second; the first time was early in the morning, probably about nine o'clock; I think there were two or three parties with him; my impression is it was Miller and Kimball—the same parties that were with him before, though I didn't know them at that time. I think the next time I saw him was between twelve and one o'clock that day, over in Tenney, Flower & Abercrombie's office; Mr. Flower was present, and I think the clerk also. The next time I saw him that day was over in the court room, here, probably about 2 o'clock. The next time I saw him I think was Wednesday or Thursday of the following week; Mr. Samuel Hale was present then. I don't recall having seen him again before Friday, July ninth, between nine and ten o'clock, when I saw him driving along in his buggy; he drove up to the curb-stone right in front of my office; no one was present. The next time I saw him on July ninth, was between two and three o'clock, when he just stepped into my office and out again; might have been some one in the office. Next saw him that day about three o'clock; Mr. Miller was with him; Mr. Hodgkins and Mr. Miller were alone when they came in. The next time I saw him that day

was about five o'clock in the evening, right at the door of my office; I started to go out of the office and met him there; don't remember whether I was going home or not; we turned back and went into the office; that is the last time I saw him that day. To my understanding of it, I made two demands on him for money on Friday, July the ninth. The first time I saw him Saturday, July the tenth, was probably about the middle of the forenoon, at my office; I think he came in alone, and that Skinner came in while he was there; I think Mr. Webster and Mr. Thomas were there. I next saw him that day at two o'clock in front of Miller & Kimball's office; didn't see him again that day after I left him that time. I had seen him twice that day; had demanded money of him twice on Saturday.

Q. You have been referring to your memorandum book for answers to your questions. Will you please produce your memorandum book and read to the reporter, as a part of your testimony in this case, the minutes that you refer to on July the 9th and 10th, to refresh your memory as to these conversations?

Objected to.

Q. You may read the entire entry, so far as it relates to this matter of Fox & Howard, on the 9th and 10th of July, designating them by the dates.

A. (Reading,) "July 9th, returnable of rule to show cause in Fox & Howard. Sale of property to J. Hodgkins, $40,000." "Saturday, July 10th, trying to get money on sale of Fox & Howard."

Q. Those are the only entries on July 9th and 10th relating to this matter?

A. Yes, sir.

Q. Will you please look at your memorandum book, and see whether, on the first and second days of July, there is any-

thing there that refreshes your recollection as to conversations had; and if so, read it as a part of your testimony.

A. (Referring to memorandum.) Nothing that relates to the conversation.

Q. Anything that refreshes your recollection about this transaction that you have been testifying to on your direct examination?

A. My memorandum says, "Filed report of bids in Fox & Howard."

Q. Is that all it says?

A. "Court entered rule approving sale, if no objections are made by July 9th."

Q. What date is that on?

A. July 2d. * * * * * * *

Q. What is there about this matter on July 1st?

A. (Referring to memorandum.) "Bids in Fox & Howard to be opened at 9 A. M., in the presence of the court."

Q. If these entries are all there are in your memorandum book, to refresh your recollection, I would like to know why you refer to your memorandum book when you are asked for a conversation on a given day, and have been during the time you were being examined on the direct?

A. To get dates right—days and dates. Part of this transaction was on Friday and Saturday of one week, and of the same days of the following week. (Referring to memorandum.) I don't recollect whether I did any other business than the Fox & Howard matter on the forenoon of July 9th, or not. I don't remember any other conversation that occurred with anybody else during the forenoon of July the 9th. I don't recollect now of any conversations with anybody else in the

afternoon of July the 9th, other than those I have testified to. I don't recollect of any other business that I did Friday, July 9th, in the afternoon, outside this matter. I don't remember of any particular specific thing I was doing from 3 o'clock in the afternoon, Friday, July the 9th, up to the evening of that day. I don't recollect whether I had any other conversation with other people, or not; people are coming in and going out of my office every day.

Q. How can you remember you were there; if you can't, what were you doing—whether anybody came in, or anything about it, if your memory is a blank?

A. I was waiting, expecting Hodgkins to be in every minute with this money. I don't think there is any doubt about my staying in my office Friday afternoon, July 9th, from 2 o'clock until 5.

Q. Do you have a distinct recollection about that—an independent recollection—so you can swear to it as a fact that you remained at your office that day from 2 to 5 o'clock?

A. I know I met Estey and Hodgkins at about 5 o'clock.

Q. Can you swear to that as a distinct and positive fact in this case, that you were in your office from 2 o'clock till 5 o'clock that day?

A. I think I can. There doesn't anything occur to me particularly that I did that afternoon, except the conversation with Estey. On Saturday, July 10th, I was making some sales of scrap iron up at the yards and Mr. Skinner was in the office that day; I don't recollect of anything that took place on Saturday, July 10th, except the Fox & Howard matter and this sale of old iron. I don't know of any particular reason why I didn't make a memorandum of the two demands I made for the money on Friday, as well as the one I did on Saturday, in my memorandum book. I usually get to my office at half-past 8 o'clock in the morning. I presume I made a memorandum in my book of Saturday, July 10th; the next Monday

morning of the same I made the memorandum about my going to Maywood. I got back from Maywood about 6 o'clock in the evening and learned at the stable that Harry Fox or Carkin had called for me while I was at Maywood; this was West's livery stable, about a half a mile from my house; I formerly kept a horse at that livery stable; didn't keep anything there at that time; my idea is that Anson Fox told Harry Fox and Carkin that they would find me there at the stable, or find out there; Anson Fox knew I had kept a horse there. After I came in that Sunday evening, I went direct from the stable to Harry Fox's house; I got to Mr. Flower's house, where I was stopping, after leaving Harry Fox's house, at 7 o'clock, or a little after. Stayed at Mr. Flower's house a few minutes and then went back to Mr. Fox's house; I called at the door of Mr. Fox's house for Mr. Carkin; I didn't see Mr. Carkin; the lady who answered my call at the door said that Mr. Carkin wasn't in; my recollection is that I called for Mr. Carkin, and the reply was that they had gone off; that Fox and Carkin had gone up town; I went there the second time to have Mr. Carkin if I could give a definite answer as to whether he would take this property; Mr. Carkin didn't say in the first conversation that evening that he wanted to consult Mr. Conro before he put in a bid.

Q. Were you definitely determined, in your own mind when you had that conversation with Carkin and Harry Fox, Sunday evening, that neither Hodgkins nor Mr. Crane nor anybody else on this bid would take this property and pay that money, Monday morning?

A. Mr. Fox said he wouldn't go into that company, and that Mr. Conro wouldn't furnish any money. Before that time, I thought it depended altogether on the organization of the company, as to whether the money would be paid or not. I don't know as I thought anything particular about whether the company would be organized and the money paid. I thought the payment of the money depended on the organization of the company. I don't know as I had any reason to

suppose that the company would, or would not be organized, before this interview on Sunday evening. I probably saw Anson Fox on Saturday, July the 10th, as I had directed him to call at my office three times a day. I saw him, first, on that day, in the morning; he was in, that afternoon, about six o'clock. My impression is, that it was after my returning from Crane's. I don't know whether he was in when I came back from Crane's, or came in afterwards. I first became convinced that the company wouldn't be formed when Mr. Harry Fox told me he wouldn't go into that company; that Mr. Conro wouldn't put in the money, and that the company would not be organized. I think I had some idea, at that time, that Mr. Conro was going to put in the money for Fox. From the conversation at Harry Fox's, that Sunday evening, I supposed it was Mr. Conro that was going to put the money in the company, for Harry Fox. I don't think Fox told me how lately he had heard from Conro, as to whether he would put in the money or not. The first time I learned that Hodgkins was not pecuniarily responsible, and wasn't good for the bid of $40,000, was, on Saturday, after my first interview with him in the morning; didn't know anything about him before that; I think I looked over the directory for him that day. I swear I never made any inquiry about Hodgkins, or about his relations to Crane, from anybody, up to Saturday morning, July 10th. I considered his bid of $40,000 a good bid for the property, and it was nearly $10,000 more than had been bid for it by anybody else. I think very likely, it would be a hard thing to raise $40,000 in this market, at that time, unless a man was pecuniarily responsible; I knew that everybody couldn't get $40,000; I knew that I couldn't. There was nothing in Mr. Hodgkins appearance, or surrounding, that led me to form any opinion as to whether he was financially responsible, or was not; there was nothing that led me to believe that Hodgkins was financially responsible. I think there has never been any difficulty before, since I have been assignee or receiver, in getting money on the bids that have been put in, and no difficulty about straw bids.

Q. Is it your practice, as assignee in bankruptcy, to recommend the highest bid, without regard whether the bidder is responsible or irresponsible, and any without making any inquiries?

A. Read that question over.

(Stenographer read question.)

A. I recommend the highest bid, usually.

Q. I want an answer to the question.

A. It is. I never make any inquiry about a man's financial responsibility in recommending a bid. I have always taken anybody's bid, if the highest. In my supplemental order of July 2nd, which Mr. Flower drew, and which I think he read over, and to which I swore, I meant that Mr. Hodgkins' bid was the "best" because it was the highest. That is all I understand by that term. Between the 2nd of July and the 9th of July, including the 3d of July and excluding the 9th of July—the time given creditors to file objections to the confirmation of the sale. Mr. Hale and Mr. Hodgkins were in my office and Mr. Hale asked him if he wanted him to furnish any money. Hodgkins told him no—he had all the money he wanted. I swear positively that at that Crane's name was not mentioned. Since this suit commenced, I have asked Mr. Hale about it, and he says it was not mentioned; but I swear from my own recollection.

Q. Did you ever make any inquiry of a single creditor from the 2nd of July to the 9th of July, as to who Hodgkins was.

A. I think not.

Q. Can you swear you didn't.

A. No, sir.

Q. Can you state, as a positive fact, that you didn't?

A. No, sir.

Q. Why can't you state that?

A. Because I don't know.

Never talked with Anson Fox or Harry Fox as to who Hodgkins was. Don't recollect of talking with Skinner or Thomas as to who Hodgkins was. I think this is the first straw bid I have taken. Never had a sale of $40,000 before.

Q. Then this was an extraordinary occurrence, wasn't it —in your career as assignee and receiver?

A. It was as I say. First heard of Crane Bros. in connection with their making claim against an estate of which I was assignee. Knew nothing then about the extent of their business or standing. Don't think I ever knew, and don't recollect having ever heard, what kind of business they carried on. Probably first heard of Charles S. Crane's connection with Crane Bros. about two weeks ago, by letter head. Don't think I ever knew he was connected with them, or ever heard about it to this day. Don't know it now, except what he testifies here. Think I read over the petition filed against me by Hodgkins on July 30th or 31st, in this matter. Read over my answer before I filed it. Dictated in the main to Mr. H. W. Tenney.

Q. I will ask you, sir, why, in your answer, you don't mention Charles S. Crane's name from beginning to end.

By Mr. Tenney. I will tell you—because I didn't suppose he had anything to do with it at that time.

A. (Examining Answer,) Well, sir, I didn't suppose he had anything to do with it.

Q. Do you swear to that?

A. Yes. I knew at the time this answer was drawn

that he had tendered $20,000 on that bid, and that he had asked me to go up to Judge Blodgett and tell the truth about this matter.

Q. You had known that he was interested in it, had you not?

A. I knew that he said he would see that I got a deposit.

Q. You knew he was interested at that time, did you not?

A. How do you mean by being interested?

Q. That he was concerned in the bid, and came there to pay the money?

A. I knew that he came there to make a deposit, or at least he said he did.

Q. You say he "said he did"—what do you mean by that?

A. To make a deposit on the bid.

Q. Didn't he hand you $20,000 in certified checks?

A. There was two checks.

Q. What do you mean by saying he "said he did."

A. You are asking me whether he had any interest in the bid. The $20,000 was a deposit on the Hodgkins' bid.

Q. Wasn't that an interest he took in the matter?

A. I suppose it was a general interest.

Q. Didn't you know at that time that Mr. Hodgkins was financially irresponsible when he [Mr. Crane] handed you that $20,000 in money?

A. I supposed he was. Supposed they were organiz-

ing a company in which Mr. Crane might have had a general interest; didn't understand he had any particular interest for himself. Thought at that time that Hodgkins had an interest in it; didn't know but that Hodgkins had hired the money of Crane; neither Crane nor anybody else told me so. Judged at that time that Miller & Kimball were interested in this; supposed they were Saturday night, after I saw Crane; never had before that; knew they took considerable interest in it, one way and another, but didn't know what interest they did have and never inquired.

Q. Did you suppose before your interview with Crane that Saturday night, that they did have any interest in it—any pecuniary interest in that bid—or were to have?

A. When I went to find Hodgkins I went directly to their office and inquired for him; told them if they wanted the property they must pay the money.

Q. Who did you mean by "they"—"if they wanted the property they must pay the money?"

A. Well, I am inclined to think I must have included Miller & Kimball in my idea. I am inclined to think I must have then thought they had some interest in that indirectly or some other way. Knew nothing about their financial responsibility; don't know I ever heard before that time. Told Miller & Kimball there were wigglers in the water; wigglers in the water were not Conro & Carkin. Wanted to impress the idea that the property, if wanted, must be taken at once.

Q. You wanted to give them [Miller & Kimball] the impression there was somebody else wanted it?

A. That was it exactly.

Q. Was that true?

A. It was not. * * * * * *

Q. You didn't care whether you gave a false impression or not, so you impressed the idea on their mind that there was somebody looking at the property?

A. That was what I meant to make, and I wanted the money. I meant to impress on them that there was something mysterious behind the curtain, that they didn't know and I did, and they had better look out or that mysterious something would make its appearance and they would lose the property; that was about it.

Q. There wasn't anything of that kind was there?

A. No, sir.

Q. Not a word or whisper?

A. No.

Q. It was a mere pretense on your part, then?

A. Yes, sir.

Q. Which was a false pretense — is that so?

A. Well, it wasn't true. When I went over to Crane's, on Saturday evening, the first I said was to ask for Mr. Crane; Mr. Crane replied that was his name; told him I was assignee of Fox & Howard; think I gave him my name. Next told him I understood that he was to furnish a portion of the money on this bid of Hodgkins; I wanted to know what there was about it. I swear definitely and positively that I said I understood he was to furnish a portion of the money — using the word "portion." I believe I remember using that word "portion;" I swear I do. He said it was a *bona fide* bid, and would be carried out; that there was a company being organized, which would harmonize the entire dredge interest; that Mr. Hodgkins and Mr. Miller had gone up to Milwaukee to see Mr. Conro; that Harry Fox was to have an interest, and that he had sent for him twice that day, but hadn't seen him yet. Didn't ask him how much money he was to furnish or whether

he would pay the whole bid or not — there wasn't anything about the whole bid. I believed he was not to furnish all of it; didn't ask how much he was to furnish, or where the money was to come from, because I didn't suppose he was under any obligations to me, or I had any right to.

Q. What did you go there for?

A. I went there to see if he was to furnish any of the money or not. After he had said what I have stated, I told him it was very well, but here was a sale of $40,000 and I had not been able even to get a deposit on it.

Q. Didn't he say something about giving you a check that evening?

A. I think not.

Q. Do you swear he didn't?

A. My impression is he didn't.

Q. Do you have a distinct recollection that he did not?

A. No, sir.

Q. So that you can't swear to it?

A. No, sir.

Don't know that I would have taken his check for $40,000 that evening; don't think that I would have taken his individual check and delivered the property; might have taken check and not delivered property if check was not certified; didn't ask Miller & Kimball for any of this money; supposed if anybody outside of Hodgkins had any interest, it was Miller & Kimball; supposed they had a pecuniary interest; didn't ask them for any money because Hodgkins was the man who made the bid, and I supposed I had to look to him for the money; didn't look to Crane for money; didn't ask him for money. Went over to Crane's on account of Hodgkins' statement that he was to furnish part of the

money, and to find out whether that was true; Crane said so; he would see that I got the deposit Monday morning; didn't ask him how much he would put up, and there wasn't a word said about it; didn't say he would make a deposit Monday morning, and pay the balance as fast as I delivered the property; don't think there was anything said about delivering, more than I told him there was a large amount of property, and wanted to know who would stand the loss if any was lost, and he said he didn't know; don't know whether I told him I was anxious to turn over the property, though I felt that way; was more anxious to get the money than the property.

2 O'CLOCK, P. M., SEPT. 24.

Cross-Examination continued.

During the intermission looked over my books ten or fifteen minutes, probably, but found nothing to refresh my recollection as to what I was doing on the afternoon of July 9th, any more than this matter, regarding which I find an entry of receiving $200 for old piles. Went to Crane's office at Hodgkins' request, not simply to take a buggy ride, but because Hodgkins told me Crane was to furnish a part of the money.

Q. You went over to find out that, whether it was so or not?

A. I supposed Hodgkins would get some money and give it to me.

Q. Did you go over there to get the money from Crane or to find out whether he was to furnish part of the money?

A. Went over at Hodgkins' solicitation.

Q. Well, did you have any object in going, other than merely to oblige Mr. Hodgkins?

said about it at Skinner's hotel; was in the office five or ten minutes; couldn't tell which got up to leave the office first.

Q. Did you leave the office when you got through with your business?

A. I think we went out together. * * * I think he asked me to go up to Skinner's hotel with him.

Q. Before you left the office?

A. Well, I couldn't say positively.

Q. Well, what is your best recollection.

Mr. Tenney.—What is his recollection of a fact he don't recollect?

A. Well, my best recollection is he invited me to go with him to Skinner's hotel, but whether it was just as I got ready to go, or whether we both started to go out of—

Mr. Cooper. Well, just as you "got ready to go;" what do you mean by that?

A. Well, I don't know whether he invited me, or—

Q. What do mean by "just when I got ready to go;" that is, when you had finished your business with him?

A. My impression is that part of this conversation was right at the door, and starting out of the door; that is my impression now.

Q. What do you mean by the expression, "just as I got ready to go;" that you had finished your business, making some motion as if going, and he made some motion to go out with you, and after you got out he invited you to go to Skinner's hotel—out of the door or in the door.

A. I don't remember how that was. Think in the main I had finished my conversation with Mr. Crane before getting

up to leave the office. It seems to me there was a little conversation at the door. Don't know that there was any details to be finished up, or that there was any details.

Q. Well, was there anything in the matter that was not perfectly understood?

A. I asked him some questions, and he answered them, and I left.

Q. Please answer my question. [To Stenographer.] Just repeat the question.

[Stenographer read the question.]

A. I don't know as I exactly understand what you mean by not being "perfectly understood."

Q. Well, "understood" so far as you had any interest, hadn't you got through with all you came there for, when you got up to leave?

A. I presume I had. As I say, I think in the main we had got through, but that after we got to the door there was some little conversation on the matter. Saw George Crane on the stand; think I remember of his being up there then. He was not the man I saw there, when there before that day; think he came in or passed out as I came out of the back room, when I was there in the afternoon with Hodgkins.

Q. When you left Skinner's hotel to go back to your office, as you say, how did you go, generally?

A. I went down in a car.

Q. On a car?

A. A car.

Q. Is your recollection so definite as to state what line of cars you went on, or anything of that kind?

A. No, sir. * *

Q. You are sure you rode?

A. Yes, I am confident I rode. Had tickets on Madison street car, and my best recollection is, rode back on them. Probably got to my office a little after six—excuse me, a little after five. During the time from starting from my office and going to Crane's, and getting back, did nothing except what I have testified to. Went there directly, and came directly back. When I saw Hodgkins on the morning of July 9th, driving up in a buggy, and told him I thought the sale would be confirmed to him, and to have the money there at two o'clock, I expected he would have it there. He had told me he would be there with the money in the morning, before I made the application to the court to confirm the sale, and I believe in my report to the court I stated that he had got the money. But the expectation of his getting the money was not the only reason of reporting to the court in favor of accepting the bid, nor was it the main reason. Ordered copy of order for purchaser from Mr. Cox. Told him to make it out right away, and would call and get it. Told him I wanted it right away.

Don't recollect of doing anything from the time of leaving the clerk's office till Hodgkins came in that afternoon. Don't recollect about the weather on Friday and Saturday, whether it was fair or stormy; my impression is they were both fair days. Hadn't heard before talking with Crane Saturday evening about Harry Fox wanting or negotiating for an interest in this property after it was sold on this bid; nothing at all. Went to Crane's office the second time for two reasons; to find out whether Hodgkins had left any word there, and to find out from Crane what he was to pay, if anything—what there was about his paying for Hodgkins; didn't make out any bill of sale to Hodgkins nor to Conro or Carkin; gave them a certified copy of the order and nothing further. Don't mean to be understood as testifying that I went to Tenney, Flower & Abercrombie's office Monday morning, July 12th, in order to have a bill of sale made out to Conro & Carkin, but meant

that I went over to give the petition to the court; gave Conro & Carkin a copy of the order Monday, July 12th, about one o'clock and told Fox to turn the property over to him, so the property hadn't been delivered when Crane tendered the $20,000 check; a certified copy of the order hadn't been delivered. When the man at Crane's office told me on the afternoon of July 10th that he didn't know anything about this business; I didn't express surprise to Hodgkins that he hadn't been delivering the property, or have any talk with him about that, but thought Crane hadn't made any provision or calculation to pay any part of the money, though I didn't express that to Hodgkins, because we were waiting for Crane to come in; nor did I when I went away and left Hodgkins there; had some anxiety about the matter, but don't remember just what I did though. I think I am just as positive as a man can be, that Mr. Woodbury was not in the office when I called, and that I never saw him until here in court; that is my honest conviction. I was entirely positive that I was not there Friday at all. Mr. Woodbury swore I was, but I still think I was there Saturday, and not there Friday; that is my honest conviction, and it don't seem possible I can be mistaken. I feel just as certain about that as I do that I never had heard Crane's name mentioned until I heard Hodgkins speak of it near Miller & Kimball's office, when I got into his buggy and had that interview with him.

Q. Can you swear positively that you were not there Friday, as a positive fact; from all the circumstances and everything within your knowledge, are they of such a character, whatever they may be, that you can swear positively that on Friday, July 9th, you were not in Mr. Crane's office?

A. Well, I have no ——; I was not out of the city, or off somewhere else, and so I haven't any positive knowledge of that kind, I was in the city on Friday.

Q. Repeat the question to him. [Stenographer read question to him.] I ask for an answer to the question.

MR. TENNEY. Repeat the answer. [Stenographer read question.]

MR. COOPER. I ask for an answer to the question.

A. I think I am as positive about it as a man can be.

Q. Do you wish to state it as a positive fact in your testimony to be so considered by the court, or simply as giving your best recollection of the matter?

A. Well, I wish to state it as a positive fact, that this is my best recollection of the matter. From all the circumstances, I am as positive as I can be that I was not there Friday.

Q. What I understand you to say then, is, that you wish to swear that this is your best recollection of the matter, and that you think you are right, though you can't swear that it is absolutely true that you were not there on Friday?

A. If Mr. Woodbury hadn't sworn positively that I was there on Friday, and that he was not there on Saturday, I don't think I should have had any hesitation whatever to swearing ——

Q. Well, how about Mr. Hodgkins' statement that you were there on Friday?

A. Well, that wouldn't have made any difference. * * * I think he might have been mistaken about it — can't give any particular reason why?

Q. What do you say about the testimony of Miller, and Kimball, and Crawford, upon this subject?

A. I think they are mistaken about the dates. Base my recollection of this matter upon the fact that after getting this order, about three o'clock, Miller and Kimball was in my office, and that I saw Hodgkins that Friday evening and expected him to bring in the money, and was waiting, and

was not out of my office that Friday afternoon, and that that $40,000.00 sale was of some importance and I was anxious to close it up. Hodgkins first promised to bring the money in about 2 o'clock, and the next day Saturday morning.

I met him Friday evening, about five o'clock, right at the door of my office, and he said he would bring it in the morning; between half-past three, when Hodgkins came in with Miller, and five o'clock, when I saw him last. I was waiting there, expecting him to bring the money, but don't recall any particular thing I was doing, during that time. Remember Mr. Esteys coming in soon after Hodgkins went out; don't recall anything generally, that I was doing; think there were other parties in my office, but can't recall them to mind now, and don't know, and can't recollect a single thing I did that afternoon, except as I have stated; don't recollect when I left my office Friday evening, July 9th.

Q. I will put the question to you directly, and I want you to answer it, yes or no, if you can give it; and if you can't give it, say so—whether you were in Mr. Crane's office on Friday, the 9th day of July, of this year?

A. Well, my best recollection of that is, that I was not.

Q. I don't want your best recollection; I want your positive affirmative testimony, or say that you can't give it.

A. Well, I can't give any different from what I have already stated.

Q. I want you to say yes, or no, or say that you can't answer, one or the other.

MR. TENNEY. He has made a definite answer to that.

MR. COOPER. Well, I have the right to ask the question, and—

A. Well, I can't say I was there, that is certain.

Q. Well, can you say you were not there certain?

A. Well, if I was obliged to say, I should say I could not say certain.

Q. Couldn't say yes or no?

A. Couldn't—different from what I have.

Q. So, that you couldn't say definitely and positively, whether you were there, or whether you were not there?

A. Well, I have said as definitely, and as positively, as I can.

Q. I understand you to say you couldn't say definitely and positively, yes or no, whether you were there or not; you couldn't say yes, that you were there, and you can't say positively that you were not there on Friday, July 9th?

A. I can't say positively; I can't say I was.

Q. You can't say positively that you can say you were not there, can you?

A. Well, I will have to answer it in that way—if it is yes or no—I couldn't state positively.

Q. You couldn't state positively?

A. No.

Q. I understand you can't say positively whether or not it was Mr. Woodbury that you saw there either?

A. Well, I don't think I saw Mr. Woodbury at all.

Q. Well, can you say positively whether it was he, or whether it was not he, that was there—you saw him on the stand—can you state positively that you didn't see that man there?

A. If he is the man that was there, he has cut his whiskers off from the side of his face. * * *

Q. Please put the question to the witness again.

(Stenographer read question.)

A. I must give the same answer as I did to the question about being there.

Q. Well, may it have been just before?

A. I am as positive that I didn't see him as I am that I was not there.

Q. Well, can you swear that you did not see him there, whichever day it was; that he was not the man?

A. No, I would not; though I have not the slightest doubt in my own mind that he was not the man; but am not positive. I don't think the petition was read aloud at all; think that the man that came up to the end of the desk run it over; don't think that there was any objection made to it all, but couldn't swear so. Have not already stated that this man read it over and spoke about it. It was read over in my office and in Kimball's office; but think only a portion of it was read aloud in my office. I read it and called Kimball's attention to it. Hodgkins was sitting at one side of the table, and Miller at the other — both at the same end, about two or three feet apart; think they were both looking the order over, and Miller was doing the reading; think it was about half-past three, and they were there probably about ten minutes. Didn't ask for any money there. Don't recollect of anybody else being there, but think some one was when they stepped out.

Q. Don't you remember, sir, that Mr. Woodbury was in the office and read that order, and objected to a clause in that order?

A. I don't remember it; no, sir.

Q. Well, will you swear that he did not?

A. I don't think the order was read at all over at that office.

Q. Well, do you state that he did not object to the order? I want to know. He has sworn that he did, and I want to know if you will swear that he did not?

A. My impression about Woodbury is that he didn't read the order and that I didn't see him.

Q. The man that read the order, whoever it was.

A. The man that stepped out to the end of desk and took the order and casually looked it over, as I thought, and passed it back then, and then Mr. Hodgkins and I went back into the other room. I don't think that at that place there that order was commented on at all.

Q. Will you swear positively that the order was not read over by the man there, and that he did not object to the first part of the order, where it spoke of "all right, title and interest of Fox & Howard," and so on?

A. No, sir.

Q. You won't swear positively?

A. My best recollection is that the order was not read there aloud at all, and that there was no objection made at all.

Q. You are giving your best recollection?

A. Yes, sir.

Q. Do you want to swear to it as a positive fact?

A. No, sir.

Q. You will not?

A. No, sir.

Q. You know that the first part of it [the order] speaks of the right, title and interest of the bankrupts, and the latter part confirms the title in the purchaser?

A. The latter part says, "all parties having liens on the property shall follow the proceeds into court," which was the portion of the order I called the attention of Miller and Hodgkins to.

Q. Do you swear you didn't call the attention of this gentleman in Mr. Crane's office on that afternoon?

A. I don't think I did.

Q. Well, do you swear you did not?

A. To the best of my recollection, there wasn't anything of that kind at all.

Q. Well, I want to know whether or not it did or did not occur?

A. I am giving my best recollection.

Q. Can you answer it, yes or no?

A. No, I can't. I can give my best recollection. I swear positively, as a definite and positive fact, that I had never heard the name of Charles S. Crane, or Crane Brothers, or any Crane used with reference to this bid of Hodgkins for forty thousand dollars before Friday, July the 9th, the evening of that day; because I have a recollection of this matter so as to call my attention to it. These men, being all strangers to me, might have mentioned the name of Crane, but not have called my attention to it. I say I hadn't heard Crane's name mentioned in connection with this bid up to the evening of Friday, July 9th. I swear to that as a positive definite fact. The reason I am so positive is, that they were all strangers, and they might have mentioned the name of Crane, or of Smith, or Jones, or any other man. When saying that I hadn't heard the name of Crane mentioned, I mean that it didn't attract my attention at all. I think Miller, or Kimball, or Hodgkins, or McBean might have spoken the name of Crane without attracting my attention. What I mean to be understood, is, that I never heard the name of Crane mentioned in connection with this

matter in any way, so as to call my attention to it, at any time up to Saturday, July 10th. I will swear that it was not stated to me in any way that my attention was called to it. I have no idea that Mr. Crane had anything to do with it.

Q. Will you swear that the name of Charles S. Crane, Mr. Crane, or Crane Brothers, prior to that coversation with Hodgkins, as you say, on Saturday, July 10th, was not mentioned in your hearing, so that you could hear it, as being the responsible bidder on this bid of Hodgkins for forty thousand dollars?

A. Yes, sir.

Q. You swear that for a positive, definite fact?

A. Yes; I have no hesitation in saying that is true. The first time I heard Crane's name mentioned about this matter was in Kimball's office, when he directed me to Crane's office on Saturday.

Q. Do you swear to that positively and definitely, that it was on Saturday that you were in Kimball's office?

A. I say that was the day. I am as positive of that as I well can be.

Q. I will ask you, and I desire to have the question answered, either yes or no, or that you can't answer in that way, whether you were in Messrs. Miller & Kimball's office, on Friday, July 9th, in the afternoon of that day, with a certified copy of this order?

A. I never was there but once, and that was Saturday.

Q. And you swear positively that you were not there on Friday; is that it?

A. Well, I say I was there once, but I say Saturday was the time.

Q. Well, will you swear positively that you were not there on Friday ; definitely and positively, as a definite fact?

A. I am just as positive as I can be that it was Saturday.

Q. Well, I don't want it that way.

A. If you want any other answer I will have to say, I can't answer it.

Q. I understand that you say, as a positive fact, that you were not in Messrs. Miller & Kimball's office on Friday, July 9th, in the afternoon of that day?

A. To the best of my recollection I was not, and that I was there but once, and I say that was Saturday. * * If I am compelled to say either way, I should say I couldn't answer the question. If I am obliged to answer it yes or no, I wouldn't answer the question.

Assuming that I was at Miller & Kimball's office Friday then the interview in Crane's office was on Friday, and on that assumption, it was on Friday that I heard Crane's connection with this matter. When I came from Crane's office after this interview with Hodgkins, and this other man, I came on a car; I haven't any doubt about it in my own mind.

Q. Can you swear to that, positively?

A. I think I can; I think I left Hodgkins there and came back in a car.

Q. You are sure you took it?

A. Yes, sir; I don't think I have any hesitation in stating that.

Q. Will you swear that you did not leave Crane's office with Hodgkins, in Hodgkins' buggy, on returning that afternoon from that interview?

A. No; I don't think I did.

Q. Will you swear that you didn't?

A. My best recollection of the matter is that I left Hodgkins——

Q. You have given your best recollection, but I want to know whether your recollection is definite enough so you can swear to that matter as a positive fact. I want to see your recollection, what it is and how strong it is.

A. I think I came back on a car; I don't think I came back any other way.

Q. Please repeat my last question.

[Stenographer read question.]

MR. TENNEY. Tell to what extent you are positive; that, I take it, is the way to answer the question.

MR. COOPER. I object to the interruption of counsel on the other side, in instructing the witness how to answer the question.

A. I think I am quite positive that I came back on the cars and left Hodgkins over there.

Q. Are you positive enough so you can state it as a positive fact against the positive statements of two other witnesses here? That's what I want to know; or whether the court is to take this as your best recollection?

A. Well, I think I am positive about that—that I left Hodgkins over there——

Q. You say, then, as a positive fact, that you did leave Mr. Crane's office not in Hodgkins' buggy?

A. I will have to answer that question just as I did the other when required.

Q. To say yes or no?

A. Yes, sir.

Q. That you can't answer it?

A. Yes, sir; my recollection is, I passed the order to Hodgkins, and he passed it to the man in the office who stood at the end of the desk, and passed it in connection with Hodgkins' remark that that was the order confirming the sale to him; think the man looked it over and passed it to Hodgkins, and Hodgkins to me; then went into a back room, came out and left Hodgkins at the door between the rooms, and right there I gave him the order; he didn't ask me for it, but I think I told him, "Here is the order and I want the money on that property. Don't know that my object in giving it was to make a formal demand for the money; don't recollect what the object was now. I swear as a positive, definite fact, that the man at the office didn't say in my presence and hearing, "Mr. Crane is prepared to take it,"—meaning the property that had been paid for in Hodgkins' name—"at any time you can deliver the property; he is prepared to take it at any time." I am more positive of that than about riding down from that office in a street car, because that was a matter in which I was materially interested; think whoever the man was there, he could hardly have made that remark in an ordinary conversational tone without my hearing him. The first question Mr. Hodgkins asked where Crane was, and the man said he didn't know.

Q. What did he, (this man,) tell you about this bid of forty thousand dollars and Mr. Crane's connection with it?

A. He said he didn't know anything about it.

Q. You swear that he told you that?

A. I swear that is my impression I got from the answers he made.

Q. You swear he told you that he didn't know anything about it, or words to that effect?

A. Yes, sir.

Q. That is a positive fact?

A. Yes, sir; that is the impression I got.

Q. I am not speaking of impressions. but the absolute truth; not fleeting impressions, or the best impressions, but absolute fact. Will you swear that he said—as a positive fact, will you swear to it—that he said, "I don't know anything about it"?

A. That he didn't know anything about it.

Q. Will you swear to that?

A. Yes, sir. The reason I am so positive that Mr. Crane said "I will see that you have a deposit the first thing Monday morning," is because I got the impression that Mr. Crane was the sharpest and shrewdest man I had seen in this whole transaction, and he hadn't committed himself in any way. What gave me that impression was his saying that it was a *bona fide* bid and that he would see I got a deposit Monday morning—there was a company being formed; he didn't say himself. I swear he said, "I will see that you have a deposit the first thing Monday morning," that he said these identical words. Don't know when I left him finally whether I thought anything about when I expected he would comply with that promise; didn't make any inquiry of him as to where the balance of the money was coming from or how soon; I didn't do so because I didn't know as he had anything to do with it; don't know that I thought anything about his knowing where the rest of the money was coming from; my idea was they were organizing a company to get the money; my impression is he said they were organizing a company and when organized each one was to pay their share. Didn't ask him how much these parties were to furnish. Said Hodgkins and Miller had

gone to Milwaukee to see Conro, and Fox was to be one of the company; don't think he said Miller and Kimball were to be a part of it; don't think Miller and Kimball's names were mentioned any more than about Miller's having gone to Milwaukee, and I didn't inquire; didn't ask him how soon the company was to be organized, or whether it was to be a corporation or co-partnership, or about the financial responsibility of the parties going into it. I wanted this thing closed as soon as possible and get the money.

Q. Mr. Crane had volunteered the first information you had got as to what was to be done with this property and where the money was to come from, except Hodgkins had told you that Mr. Crane was to put up a part of the money, hadn't he—except the fact the bid was in Hodgkins' name?

A. He didn't tell me what was to be done with the property.

Q. Please answer the question.

(Stenographer read question.)

Q. When you were talking with Mr. Crane and were anxious to get this money, and as you understood he would only see you get part of the purchase money Monday morning, why didn't you ask him then who the other parties were, and what the chances were, so as to ascertain what the chances were to get the balance of it? That is what I want to know, why you didn't!

A. I don't known as I can give any particular reason.

Q. Do you think you were attending to your duties properly by not inquiring?

A. I am inclined to think I was.

Q. That is your idea of what was your duty?

A. I thought I was making proper effort to get pay for

the property. The bid was a much higher bid than any before offered, and I didn't know where or at what price I could sell the property to anybody else. I began to have some fear that the sale would fall through, and thought I would be blamed by the creditors if it did. Didn't make any inquiry of Crane that evening as to where, or from whom, or how soon the balance of the purchase money, over the deposit to be made, was to come from, because I supposed they were going to organize a company and I would get the money. Presume I was interested in knowing how soon the company was to be organized, but didn't inquire because of his saying that Miller and Hodgkins had already gone to Milwaukee to see how much money Conro would put in; but my impression was that Miller and Kimball were to have an interest in it. Didn't ask him whether he had had any prior conversation with Conro about it, or make any inquiry about that, nor did he tell me. Didn't ask him how much he was going to pay, nor did he give me to understand whether it was five hundred or twenty thousand dollars; I don't know as I can give any particular reason why I didn't ask him; it would have been natural and reasonable, probably, to have done so. Don't think there was anything said about the amount of the deposit to be made. Was satisfied that the sale of the property depended upon the organization of the company. Don't think when I left Crane I was satisfied that I would get a reasonable deposit Monday morning, and would ultimately get the balance; was dissatisfied because I thought it was only one more promise, but I don't think I expressed any dissatisfaction to him, because I didn't look to him as the party I was to look to for the money on this bid—as having any claim on him whatever, because Hodgkins made the bid and was the man whose name I had. It didn't make any difference from whom I got the money. At the time of seeing Crane I was solicitous about it. I am inclined to think I left him expecting that I would get some money from him Monday morning.

Q. Well, were your impressions confirmed when you went back and had the talk with Dr. Thomas in your office

that evening, and Thomas told you he knew Crane, and he was all right?

A. Thomas didn't tell me so.

Q. Mr. Thomas has sworn that.

A. Yes; but he told me to-day though that he was mistaken, and wanted to come up here and correct it; that was his first words to me this morning. Mr. Thomas swore that he said he would like to have Mr. Crane's check for ten or forty thousand dollars. I don't swear that Crane's name was not mentioned in that conversation with Thomas that evening; I don't remember that it was or was not. Told Thomas I had been over to Crane's office, and that the sale would probably depend upon the organization of the company, and Crane's name was mentioned in that conversation. Didn't make any inquiry of Thomas about Mr. Crane's responsibility. I don't know that I was doubtful about it at that time; never had talked with Harry Fox about Crane before this. After this talk with Crane on Saturday evening, and Carkin's promise on Sunday evening, I don't think, as a matter of good faith, I should see Crane before asking to have the sale rescinded, from the fact that I didn't suppose I was under any obligation to him or he to me; didn't consider that I was under any moral obligation to Mr. Crane. Crane was the only man that said he would see I got some money, but I didn't think he was under any obligation to make the deposit, but thought if the company was organized he would come with the money, though he didn't say "if the company was organized." Crane didn't ask how much money I wanted, or the amount; I swear no question was asked about how much money he wanted. I swear I didn't tell Mr. Crane, "I know the man by reputation," or something to that effect; I had known nothing about his reputation. Went to Judge Blodgett's between half past nine and ten o'clock Monday morning. Before half past nine was probably answering my correspondence; I don't remember that I was. Keep no letter press. Carkin had come in before I went there — between half past nine and ten.

Didn't tell Judge Blodgett about this talk I had with Crane, because I didn't regard it as any consequence whatever, or that I was under any obligation to him. Told Judge Blodgett that I had made repeated applications to Mr. Hodgkins for money on this bid, and he hadn't paid any. Didn't mention Mr. Crane's name at all to the Judge, because I didn't regard it as of any conseqence; couldn't hold him any way. Didn't regard it as an important thing or of any particular consequence for the Judge to know that Crane had promised to make a deposit that morning because he had made no promise on which I could hold him; and because Hodgkins had ample time to pay and hadn't; and inasmuch as I had a better offer, and thought it was to the estate's interest to sell to another man. Made no effort to see Crane, or Hodgkins, or Miller, or Kimball that morning, because I told Hodgkins that if he didn't pay I would sell to somebody else; he had made a better offer, and that it was my duty to take it. Didn't know that Crane would not come that morning with more money.

Think I required Carkin to make a deposit of fifthousand dollars. Didn't make an inquiry as to where the balance of the money was to come from. Told him Sunday night I would ask the court to make a new sale on his making a bid and deposit. Didn't know who Conro was; had seen him in my office once before soon after I was appointed provisional assignee. Knew nothing about his financial responsibility or about Carkin's financial responsibility. Think Carkin came into my office alone. Swear Harry Fox didn't come in with him. Carkin himself received the order for me. Suppose he went over to receive the property because he went off.

Don't know Harry Fox has been in charge of the property ever since for Conro & Carkin, but have heard it so stated. Think sold some property to the firm of Conro & Carkin since that time, and Mr. Harry Fox has had something to do about it; has done some of the business; he was in my office last night; hasn't been in there frequently since

the sale with reference to this property that was sold on the bid, but has been in relation to other property and about the estate. Have been to Harry Fox's office several times on business since Sunday night, July 11th, but not to his house, except after the key to the house next door. I got the impression that Hodgkins was going to ask for a rebate on this sale, and that is the reason I asked him Monday morning whether he understood he was to take the property subject to the lien of Anson Fox on one of the boats, and I asked the question to see whether my impression was correct. I didn't ask him for the purpose of getting him to make some objection on that score.

Q. Was it said in the same connection with your remarks to him asking him whether you hadn't made these demands so and so?

A. Yes, sir.

Q. What did you ask that for?

A. I asked that to confirm the —— [A pause.]

Q. Confirm what?

A. What I had already —— [A pause.]

Q. Confirm it in your mind?

A. No; it was already in my mind.

Q. Well; what did you want to confirm then in your own mind?

A. [No answer.]

Q. I wouldn't like to wait all day for an answer to these questions. You certainly must be able to answer.

[A pause.]

Mr. Tenney. Repeat the question and let us see if I understand what it is.

Mr. Cooper. Go back two or three questions there and see what the question was.

[Stenographer read preceding testimony commencing with question, "What did you ask that for."]

A. I don't know any particular reason for asking that question.

Q. Didn't you ask it for the purpose of getting an admission from him that that was the fact — that you had made these demands, so that you could use that admission against him if there was any trouble about this matter of rescinding the sale to him and selling it over to Conro & Carkin?

A. It don't occur to me now it was, but possibly it might have been.

Q. Do you swear it was not?

A. No, sir; possibly it may have been.

Q. Do you know of any other reason than that?

A. I don't know of any other reason than that; no, sir.

Q. That was possibly the reason then, wasn't it?

A. Probably it was. I waited until Monday morning to go over with Hodgkins because I hadn't seen him since, between two and three o'clock Saturday afternoon. I won't swear that it was not later than three o'clock, but my best impression is that it was not. I talked over the matter of this sale with Mr. Flower during the Friday and Saturday, and then I became afraid about getting their money. Mr. Flower went away at five o'clock Saturday evening, and I had

this conversation with him just before he went away. I told him then I had made a mistake in not taking a deposit. I don't think that considering this sale was to be for forty thousand dollars, and that the property was scattered around, the time between Friday afternoon at half past two o'clock, and the next Monday morning, was a reasonable time in which to get the money, because they agreed to have it there Friday at two o'clock, because he [Hodgkins] had agreed to have it there Friday at two, and had had a week to get it in before that, though the sale was not confirmed until two o'clock, and I didn't know positively it would be before then.

Don't think it is customary for men to have large amounts of money ready at hand. Didn't think the getting of the money would depend a good deal upon the character of the bidder and his financial responsibility, because my sales heretofore have always been to the highest bidder, and on payment of the money I delivered the property; and if it was not paid I sold to some one else. I never have allowed as much as one and a half working days to pass from the time of order of sale until I got my money, where the property was ready to be delivered, as this was. The largest sale I have ever made to any one man before was fifteen or twenty thousand dollars. Don't recollect that I ever, before Monday, July 12th, asked Mr. Hodgkins for a deposit on account of this sale.

Re-Direct Examination, by H. W. Tenney, Esq., in behalf of the Assignee.

A. It was all on one day, in the same afternoon that I went to Crane's office, and didn't find him, and then went again and did; and it was on that same day that Mr. Estey and Mr. McBean came to my office about this matter; had my attention particularly directed to the parts regarding this transaction soon after it occurred, and have considered over all the matter connected with it carefully, and it is my best recollection that it all occurred Saturday; havn't any reasonable doubt in my mind about it.

Re-Cross-Examination, by John S. Cooper, Esq., in behalf of Petitioner.

Don't recollect as any one in particular directed my attento the succession of events, and don't know how early after their occurrence is was directed but probably about the time the first petition was filed, in the latter part of July; might have been before; never committed it to writing; guess that Mr. Estey was in my office the next day or two after the sale to Conro & Carkin, and I repeated the whole transaction to him as I understood it.

Examination Continued, by Mr. Crane.

Saw Conro once in my office before this sale, just towards evening, some time between when the property was advertised and the time bids were open. Have seen him once or twice since that time, (referring to memorandum;) saw him between the 5th of July and the present time; my impressoin is, I saw him there Monday or Tuesday after the day of sale, but am not positive. That would be (referring to memorandum,) the 12th or 13th. At that interview Conrotsaid nothing about having a conversation with Crane regarding this property. At that time he did not come to my place, but I met him on the sidewalk, near the corner of Washington and Dearborn. Don't think I had any talk with him about the property at that time. I am positive Conro never told me anything about Crane's position in this matter; he made no reference to this talk with Crane at Skinner's hotel as that time. On thinking of it, I remember seeing him at the Palmer House since that time, and then we had a conversation with him about this talk between him and Crane at Skinner's hotel.

DEPOSITION OF THOMAS M. SKINNER,

SEPTEMBER 23, 1875.

Examination by H. W. Tenny, Esq., on behalf of Assignee.

Reside at 246 Indiana street; am a clerk for Bradford Hancock, acquainted with Jefferson Hodgkins; could not tell when I first saw him, in connection with this Fox & Howard matter; recollect of Hodgkins being at Hancock's office on Saturday morning, the tenth; I do not recollect of his being there on Friday; do not think I was in Mr. Hancock's office on Friday; I was in Hancock's office somewhere in the neighborhood of eleven o'clock; I do not know that I recollect any conversation particularly between Hodgkins and Hancock; I think I was there when Hodgkins came in; there was something said I think, that the money was ready, and Mr. Hodgkins asked Mr. Hancock to go with him to South Chicago, that afternoon. Mr. Hancock told him that he would not go; that he would not go anywhere until the money was paid; that he was ready to deliver the property; he would not go anywhere till the money was paid, that was the idea; Mr. Hodgkins said he would pay it; was ready any time; Mr. Hancock said he wanted the money; that was what he wanted; I do not think Mr. Hancock said anything about selling the property to somebody else if Hodgkins did not pay at that time; I think Hodgkins was in the room when I came in, but I would not be positive as to that; didn't hear any conversation between them on the afternoon of that day; next time I saw Mr. Hodgkins, was Monday morning. On Monday morning I came in there about eleven o'clock, or a few minutes after. As I met Mr. Hancock on the way out, he told me to go in and sit down; he would be in in a few moments. While I was waiting, Mr. Hodgkins came in asked me if everything was all right, and I told him it was as far as I knew; he asked me where Mr. Hancock was and I said he had just gone out; I thought he would be in presently; he waited; said something to me about coming this morning to make a deposit on the property; after Mr. Hancock

came in he said something to that effect; Mr. Hancock asked him if in buying this property, he understood Anson Fox owned a quarter interest in the tug Hewitt, and Mr. Hodgkins said he did not buy it with that understanding; Mr. Fox must look to the court for his interest. Mr. Hancock then said, "Mr. Hodgkins, do you admit that you agreed to pay the money on Friday afternoon; that you said you would pay money on Friday afternoon, Saturday morning, Saturday noon, Saturday afternoon, and that I said if you did not pay it I should sell the property to somebody else; that you said if I could get more for it, I had better do so, or words to that effect?" I cannot give the exact words; "and you admit this," and he said "he did." He says, "I have sold the property and got the money." After that Mr. Crane came into the room. Mr. Hancock said something to Mr. Hodgkins, and I think it was after Mr. Crane had left the room, asked him whether he would raise the bid, and he would take it and submit it to Judge Blodgett, but he thought it was too late. If he would raise the bid and make a deposit on it, he would go to Judge Blodgett and see if it could be opened up.

Q. Well, was there anything said about that — anything said in regard to his refusing to go without a deposit of money?

Objected to as leading.

A. Yes, sir.

Q. State what was said on that subject.

Objected to as leading.

A. Just as I stated before; Mr. Hancock said he must make a deposit, and if he did he would go to Judge Blodgett and state the case, and see if the bid could be opened up; he did not want any more straw bids, or bids without a deposit, was something to that effect.

Cross-Examination, by Mr. Crane, on behalf of Petitioners.

Have worked for Bradford Hancock since he was appointed provisional assignee of the Fox & Howard estate; came into his office since the sale to Conro & Carkin; I cannot say what time; previous to that I was in Fox & Howard's yard, selling iron there for the estate; on the 10th of July I was at the yard, and came down to Bradford Hancock's that morning; I was in the habit of coming once a day to his office, or nearly every day; I could not tell how long I was in Bradford Hancock's office on Saturday; in the neighborhood of half or three-quarters of an hour; perhaps longer; I do not know; I do not recollect now; think I was not there more than once during that day. I know Harry Fox; have known him two years since last March; used to work for him. Know Anson Fox; known him the same length of time. Am clerk for Bradford Hancock, in his office; I had the work for the Fox & Howard estate — writing, and in selling the assets; somewhat familiar with his business, in connection with the Fox & Howard estate; I am not familiar with the present status of the estate, and in respect to the sale of the personal property to Conro & Carkin; the location of the real estate and all that kind of things; I did not keep his books; I think I was not in Bradford Hancock's office on Saturday, July 10th, in the afternoon; I think I saw Anson Fox on the 10th of July, Saturday, at Fox & Howard's north yard; I think I did not see him anywhere else; do not think I was present at a conversation between Anson Fox and the assignee on the 10th of July; I was never present at a conversation between Harry Fox and the assignee in respect to the sale of the property; never had a conversation with Harry Fox in respect to the sale of the property; never was present at any conversation between the assignee and Carkin; have seen Carkin in the presence of Fox and Hancock, but not in any conversation in connection with this sale. First heard that Conro & Carkin had paid forty thousand five hundred dollars for the property on Monday morning; I learned it, I guess, after Mr. Hodgkins had left; hadn't seen Hancock before that morning, Mon-

day, July 12th; it was something after eleven o'clock that I went to Hancock's office that morning; I came from Fox & Howard's north yard to his office; I think I did not see Harry Fox there that morning; saw Anson Fox at the yard, I think, but would not be positive, before I came; no conversation between me and Anson Fox that morning with reference to that; don't know where the assignee had been that morning, before eleven o'clock; after I went into Hancock's office and sat down, Hodgkins came in; might have been in ten minutes; Hancock had not returned when Hodgkins came in; he came in after Hodgkins did; heard a conversation in Hancock's office that occurred between him and Hodgkins that morning; I think we all sat down at Hancock's desk; Mr. Hodgkins opened the conversation, and said "Good morning"; he said he had come this morning to make a deposit on the sale; I think Mr. Hancock answered him by asking this question in regard to the tug boat Hewitt; I think Hancock made no reply, in respect to Hodgkins making a deposit, except to ask him this question; Hancock then asked him if the time that he had said he had promised to have the money ready; at these different times, and that he might sell the property if he could get a better bid; could not give the exact words; that was spoken in an ordinary conversational tone. I mean to state, on my oath, that Hodgkins admitted to Hancock as having told him he could sell to somebody else; Hancock did not say whom he had sold to; do not recollect Hancock's saying anything about a man by the name of Mulligan; Mr. Hodgkins asked him if he had sold it, and Mr. Hancock said he might have sold it to Mr. Thomas, and Mr. Hodgkins said, in a joking way, "his name isn't Thomas, but Mulligan"; I think it was a joke in regard to Mr. Thomas; at that time I had no idea the property had been sold; I was surprised to learn that it had been sold At the time Hodgkins came in there and made that statement, he was ready to make a deposit; supposed that the Hodgkins sale was *bona fide*, and the property would be paid for; the conversation was sometime between a quarter and half-past eleven; I did not look at my watch — could not tell; quite sure I did not look at my watch;

think I saw Carkin and Harry Fox on Monday morning, both of them in Mr. Hancock's office, in the neighborhood of eleven; I do not recollect whether it was before or after Mr. Hodgkins and Mr. Crane had gone out; I think Mr. Carkin came in and asked if Mr. Fox had been there; he asked me if Mr. Fox had been there; Mr. Hancock was not in; he did not wait until Hancock came in; he went straight out again — right out again; I did not see him come in afterwards; I was there when Mr. Crane came into Hancock's office; I should say it was — I have no recollection except it was about half-past ten o'clock I left the north yard, and I came directly through, and the time it usually takes me to come down; I could not swear definitely whether it was ten minutes after eleven or half past. I heard the talk between Crane and Hancock as though they were talking; I did not pay so much attention to what Mr. Crane said to the assignee first; the conversation was not particularly loud; I thought Mr. Crane was a little excited, from hearing what he said; Mr. Hancock informed him that he was too late; I think Mr. Crane said he had come to make a deposit on the property; I saw Mr. Crane pass what they said were two checks, but I did not have the checks in my hands.

Q. That who said was?

A. Mr. Crane said, Mr. Crane.

By Mr. Tenney. We do not deny.

To Mr. Cooper. Heard the assignee then say, then speaking about having sold the property to somebody else; I do not think anybody's name was mentioned; if it was, I did not hear it; I do not think the assignee had instructed me to pay attention to what was going on, but sat by and listened, and heard this talk. Before Mr. Crane came in, he called my attention at the time he asked Mr. Hodgkins those questions in regard to those different promises; he asked me to recollect that; he may have spoken to me about that since; I do not know whether he has or not; I do not know that he has; I

do not know that he has or not; he might have asked me what I was going to testify about this matter; I did not rehearse it over with him at that time, at the time my affidavit was made; I told him then, what I could testify. After Hancock had informed Hodgkins that the property had been sold, there was something said about a raising of the bid. I think it was after Mr. Crane came in; would not be positive as to that; the assignee did not say anything about the transfer papers having been made out or not having been made out, that I heard; I think I heard all that was said. I do not know that Mr. Hancock said that Hodgkins might raise his bid; I think I should have heard it if he had said it at that time; did not hear anything of that sort. I heard Mr. Hancock say if he would raise his bid and make a deposit, he would go to Judge Blodgett, and see if the case could be opened. I think that was after Mr. Crane came in.

Cross-Examination continued, by John S. Cooper, Esq., on behalf of Petitioners.

Before Hancock was appointed provisional assignee, I was over there at the yard, looking after things generally, at the yard of Fox & Howard, on the North Side, North Branch. Before Fox & Howard went into bankruptcy, I was superintendent of shops and draughtsman, and time-keeper. I was familiar with this property. After that, I went into the employment of Anson Fox, as provisional assignee. My duties then were the same, as they had been before, but we were doing nothing there; I was looking after the property. After Hancock became provisional assignee, I took hold to sell the loose plunder round the yard, lumber, timber, scrap iron, etc. On Monday, July 12th, I was still employed in the yard, selling iron, wood, etc., as I had before. I have no recollection of how long I continued after July 12th; tell by my memorandum book; may have been one week, or two weeks, after we sold to Conro & Carkin, that I came in Bradford Hancock's office. My wages, under Anson Fox, were seventy-five dollars a month, and the same under Mr. Hancock.

Have lately been making plats of the Fox & Howard property, and maps of the real estate, and writing up various things connected with that; not employed for any definite time; that depends on the assignee, as to how long my employment shall continue; I did not help in turning over this property to Conro & Carkin. I know the property was turned over to Conro & Carkin. I never saw the papers, but they are in their possession, or I supposed they were; that is the title of the estate. Tug George B. McClelland was turned over; four dredges; five pile drivers; the old machinery was not; that is in the yard still, in my charge, or rather in the charge of a watchman there, who is looking after it; no tools were turned over; sold Conro & Carkin some of the tools and machinery on the North Branch afterwards. Mr. Fox and Mr. Carkin negotiated the sale, and came together. Met Mr. Conro once, since the sale, in Fox & Howard's office. I do not think I have seen him at the yard, for a year, or a year and a half; have not seen Mr. Conro at the yard, but heard of him being there since this affair came up; may have been a year ago; tools at the South Branch were not turned over to Conro & Carkin, nor was any oak or pine timber, or piles; no office furniture that I know of. I do not know whether Anson Fox, or Harry Fox, are the men in charge of this property now; they are both interested in the matter; I think so; I know nothing about the matter; kept just a small memorandum book up at the yards; know of no business that Harry Fox is engaged in, except as superintendent here. William B. Howard has an office, but not in connection with this property, as I understand. I believe the personal property has all been sold, except this old machinery that is still on our hands, machinery in the machine shops, engine, etc., and two dredges; made an effort lately to sell it.

DEPOSITION OF WILLIS H. ESTEY,

SEPTEMBER 23, 1875.

Examination by H. W. Tenney, Esq., on behalf of Assignee.

My name is Willis H. Estey; reside in Chicago, on the south side, 200 Dearborn street. I am one of the creditors of Fox & Howard; I do not know Jefferson Hodgkins; do not know that I ever saw him; I do not know as I know certain anything in regard to a bid made in Hodgkins' name for a part of the property of Fox & Howard—that is, definitely. I was in Mr. Hancock's office Friday, the day before the property was sold, to make some inquiries about the sale; he told me he had sold it; I do not know but what he told me to whom he sold it, but it was sold, I think he said, for forty thousand dollars; talked with him about things in general, and went away. The next day I went in again; as I was going along, met Mr. McBean, there; I think he was going there—one of the McBeans. He said the sale probably would not amount to anything; Hancock had not done it right; had not made the parties pay anything down; probabilities were they would back out; went into the office; Mr. Hancock was there; I asked Mr. Hancock how the sale was getting on. "Well," says he, "I don't know." When I went in Friday—I will correct that—he told me the parties had gone out after the money; I think he said Mr. Miller; I won't say who the parties were; I think he said Miller; I know Mr. Miller, you know; that they had gone out after money then.

BY MR. COOPER. I object to any testimony of the witness as to what occurred between him and Mr. Hodgkins when Mr. Hodgkins or Mr. Crane were not present, or some witness.

BY MR. TENNEY. Mr. McBean was there?

Mr. McBean was not in on Friday; he was in on Saturday; I was going to say what Mr. Hancock said; I talked with Mr. Hancock about the sale on Saturday, you know. McBean was present Saturday. I thought Hancock evaded the matter

about the sale a little—so much so, that after talking with him, I went out. A Mr. Fisk owned half the notes with me—D. Fisk—and I told him I was satisfied this sale was a bogus one; did not amount to anything; I was satisfied, from the talk with Mr. Hancock, that he said he had got nothing down; that I am satisfied it is a bogus sale, and it don't amount to anything, and it has all got to be sold over again; that was the impression I had, you know.

Conversation with Fisk objected to.

I went to Hancock's office to see if the sale was confirmed, and to see if he had got his money; supposed it was all right; told me the day before it was a sale, and we had got so much we could rely upon. I think I asked him in regard to their having made a deposit. My impression was that he said they had gone out for the money then; then it was about three o'clock, between three and four o'clock; that was on Saturday.

Q. As near as you can fix the time on Friday?

By Mr. Cooper to Stenographer. Note an objection to the conversation of the witness, too, on Friday, between him and Hancock when no person was present.

Conversation was between three and four o'clock Saturday, about the same time it was on Friday; that would be my impression; on Friday Hancock said the parties had gone out after the money; on Saturday we went together, McBean and I; talked with him again, and I said, "Your sale is going to blow up, ain't it, Hancock?" and he said, "I don't know; I guess not," but did not say it was not going to blow up or was; my impression, when I went away, was that the thing had blown up. Of course I got that from the way it appeared to me; I do not know about anything being said one Saturday about anybody being off after the money; I think he told me there was somebody after the money then, but I would not want to swear positively about that conversation I never expected to repeat again; I did not think of it. Mr. Hancock called me down to-day, and a day or two ago, and said he would like to have

me come up here. I think I said I did not believe the sale would come off to Hancock, at any rate to the other party; think I expressed some doubts about it in the office, and asked if he got anything down; and he said he hadn't, and from what Mr. McBean told me, I supposed he had made a mistake in not taking something down. I am acquainted with Mr. Charles S. Crane; not very familiar with him, but I have been acquainted with him more or less for five, six, seven years, perhaps longer; used to see him on the west side. I had an interview with him in regard to this bid; I think it was some of McBean's folks; I believe it was Moss that came into my office; might have been the first of the week after the sale to Conro & Carkin, told me he wanted me to go to Ayers' office. I asked him what was up, and he said Hancock had made a bull bout something, something of that kind; there was another party claimed it. I had not known then about the sale of the other party; went over there, supposing there was to be a meeting of all the creditors; there was nobody there but Mr. Crane. I believe Mr. Ayer was not there; I believe he was not when I went in; and then McBean, or some of them, says, "Mr. Crane says it was a steal." Then Mr. Crane went on and told me about this sale to him. I had heard a great deal against Mr. Hancock previously; that is, some people finding fault with him, and heard two or three stories; several stories that came to me. I went to Mr. Hancock and found out there had been a mistake; did not state the facts as they were, and so I said to Mr. Crane, "I would like to have you go down with me to the office — Hancock's office — and talk the matter up there before Mr. Hancock; I want to see justice done about the thing. Think Mr. Crane's reply was, he did not want anything more to do with Hancock, and he would not go down. I had heard stories that other folks told, that McBean had told some stories, and says I, I am disposed to hear both sides. After he had told them what he had, I said to him, "Mr. Crane, I think very likely, knowing you as I do," that is, knowing him to be a reputable man, and a man of means, and everything of that kind, "I think very likely," says I, "I would have taken your word for coming up." He told how it was

about his coming up Monday morning, "but," says I, "think if I was in Mr. Hancock's place, and a stranger, after having all this backing and filling about this thing, I would have done exactly as Mr. Hancock did. Then I think in the conversation that came up, it was that I asked Mr. Crane, (he knows whether I did or not, my impression is I asked Mr. Crane) if he could object if Mr. Hancock could compel him to take the property; my impressions are he could not compel him to take it, from what had transpired. I do not know of anything else that took place.

Cross-Examination, by John S. Cooper, Esq., on behalf of the Petitioners.

On Friday, the day of the sale, could not tell who was with me in Hancock's office, except I guess Mr. Thomas was there; I do not know that there was anybody connected with Fox & Howard; neither of the McBeans were there, I think; Mr. Crane was not there; do not think Mr. Hodgkins was there; do not think Mr. Moss was there; do not think Mr. Miller or Kimball were there; do not recollect there was anybody there having anything to do with Mr. Hancock; my impression is, no one else but Mr. Bissell was with me, if he was there. Went there on Saturday; guess I wanted to see how the thing was going on; Fisk and I had twenty-five hundred dollars in there. Do not know as I know anything about the bid of forty thousand dollars having been put in when I went in on Friday, till I heard it was sold. I thought the day I was in was the day of the sale; I saw it was to be sold at ten o'clock; I could not tell anything about the day. The day I went in first was on the day of the sale, as I understood it; it was the day after the sale that I was in; I think it was Friday, for the reason I knew I was in on the next day, and that was Saturday. It was right after the sale, as I understood it; the sale had been made; must have been the last Friday, the 9th; I know the sale had been made because Mr. Hancock told me so; it had been sold for forty thousand dollars; the only way I knew

I saw it in the papers the next day; this was the first intimation I had of the sale, I think; I think there was something put in the papers about it. I think very likely I saw an exhibit attached to the report of the provisional assignee, filed July 9th, 1875, being an advertisement cut out of a paper; I read it like I read all those sort of things, but I could not swear whether I did or not; I think I saw that slip in the papers, but I could not say anything about it positively; I expect I saw that; I read all those things; I persume I did, because I read the papers considerably, and I presume I saw it, but I could not say.

Q. That is what you have reference to when you say, the day after you were in there, that Friday, you saw this thing in the paper?

A. Well, I think very likely I saw something in the paper of that kind; I think very likely, but the first information I think I got was from Mr. Hancock, on Friday. It was A. J. McBean who went in with me to Hancock's office on Saturday, the young man; I do not know how he came to go in there with me; he was going along there, and I think we went there from the corner, went in together. I think the conversation was in regard to the sale, whether he had got his money or not, whether he had got this money for the property.

Q. Mr. McBean has sworn in this matter that the assignee said that he had given them till Monday morning to make a deposit; can you tell that was not so?

A. I could not.

I had not known Mr. Hancock before he commenced in this business; I think I was one of the parties who signed a petition to the court to appoint him provisional assignee. In the first place I went in for McBean, then McBean was not a candidate for the office, I believe, and Mr. Ayer took his place; in the meantime I talked with some people about

Mr. Hancock, with some one who had known him, being matters of that kind. I went in to see him myself and talk with him, and thought he seemed like a good, straightforward man. Mr. Ayer, I presume, was a man of so much business he could not attend to it very well, and he was a little old, too. On Saturday, I thought Hancock acted just as though he thought the sale would not be confirmed; as though he did not think the sale would be carried out. He did not say right out, "I know the sale is made; I know the parties are going to take the property," but he thought they would, or guessed they would, or something of that kind; he did not act as though he did not care about their taking the property, and as though he had somebody else in view to take the property. I do not think anything of that kind; he acted as though he did not believe they would take the property; I think he mentioned this man's name at that time (indicating Mr. Hodgkins); I think Mr. Miller's name was mentioned; I do not think there was anybody else's name mentioned; this conversation lasted ten or fifteen minutes. I do not recollect that the assignee told me he hoped to get the money by Monday morning. Mr. McBean said he thought the parties would back out; I do not know whether he said parties or party; he thought the sale would not take place. I rather blamed Mr. Hancock for not getting the money down on the sale; I do not think Mr. Hancock said why he did not require a deposit on the sale of the day before. What I have stated has been an entirely independent recollection of mine; I have not talked particularly to the assignee about the matter; he told me yesterday that he knew I was in there, and he said he would like to have me come in. I talked with him once before about what I understood, I believe; I told him of the conversation that passed between Mr. Crane and I; think it was the day before or day after the conversation; do not know as I had any particular object in telling him that, no more than I had heard a good many stories, and this was one of them; I think I was talking with him to know why Mr. Crane did not get the property, something of that kind.

Q. What did he say was the reason?

A. He told me he waited, I believe, until eleven o'clock; that the time was fixed that Mr. Crane was going to fetch up the money.

Q. That Mr. Crane was going to fetch up the money at eleven o'clock, but did not do it?

A. I think there was something of that kind. Yes.

My impression is the meeting at Ayer's office was on Monday; the day of the sale to Conro & Carkin may have been on Tuesday. I think Mr. Moss invited me to go there. Did not know him, but had seen him at McBean's office. He is a shortish man. Do not know anything about it whether Crane got up that meeting. Mr. Moss told me about the meeting. Mr. Crane was there, or came in very soon afterwards. My impression is, when I went in there there was not anybody there but Ayer. I have not a distinct remembrance of their conversation, of Crane telling me that he was not in any way bound by the original sale. It seems as though he said that. Do not know that the name of Conro & Carkin was mentioned at the time. It seems to me as though the conversation was something like this, that I felt a little indignation because I thought Mr. Hancock had not been treated fairly. I felt a little cross that Mr. McBean and this other gentleman, Crane, should get up something to keep those things going. If he was the assignee they should help things along. I will swear this, that I said to Mr. Crane, I want you to go down to the office of Mr. Hancock and talk this matter over; I want to see justice done. My impression was that I asked Mr. Crane if Mr. Hancock could hold him. My impression was that he said that he could not, but I would not swear to that as a fact. I can remember so as to swear to that, that I asked him to go to Hancock's office. The other part of it I would not swear to as a fact. I do not know as I can swear positively that on Saturday Hancock told me that some one was out after the money; I can swear definitely that he told me that on Friday. Never made any inquiry myself

about the responsibility of Hodgkins from the 7th till the 12th of July; supposed Mr. Hancock would look after that. I blamed him for not getting something down at the time, Saturday; for not paying something down. At the meeting at Ayer's office Mr. Moss was there; I think Mr. Ayer came in. Mr. Crane thought he had not been rightly treated; I don't know as he had. I suggested to him to go down to Hancock and talk the matter over.

Cross-Examination continued, by Mr. Crane.

I thought this sale for forty thousand dollars was a bogus sale, from the way Mr. Hancock answered me and the way he talked; and Mr. McBean told me the sale would not be confirmed. That they would not take the property is the only reason why I thought it was a bogus sale.

DEPOSITION OF EDWARD A. WEBSTER,

SEPTEMBER 23D, 1875.

Examined by H. S. Tenney, Esq., on behalf of Assignees.

My name is Edward A. Webster; live in Hyde Park; my place of business, Room 8, 149 LaSalle street, in the same office that is occupied by Bradford Hancock. I have seen Hodgkins in Hancock's office; I do not remember of seeing him on Friday, or Saturday, the 9th of July last. I may have seen him there Friday; on Saturday I did not see him there; I think I was not in the office Saturday; Friday I was in the office backward and forward, and may have seen him there but could not say definitely. Remember of seeing him there on Monday following; heard conversation between him and Hancock at that time; cannot give the conversation exactly, I can give the substance of it: I recollect Mr. Hancock specifying to him certain agreements that he had made in regard to pay—specifying certain specified times that he would pay that money,

or a portion of the money, and Mr. Hodgkins said it was correct. And also, in regard to selling if he could; Mr. Hancock said if he did not pay the money down, or something to that effect, he should sell to sombody else, and Mr. Hodgkins made the reply "very well, sell if you can," or words to that effect. It was not my business; I was merely in the office; nothing connected with my business, and it was only incidentally I overheard the conversation; I was not paying attention to it. Hancock specified three or four times that Hodgkins agreed to pay the money and didn't; I cannot tell definitely, I think I recollect Friday, at two o'clock, and then again in the evening, and next day, but I would not be so very direct in that. In regard to Hancock having told Hodgkins at these several times that if he did not pay he would sell to somebody else, I could not state the conversation verbally; could not give the exact words, that was the idea. Mr. Hancock told him, or said something in regard to selling to somebody else, and Mr. Hodgkins made the remark "very well, if you can sell to somebody else you can," or words to that effect. I do not think Hancock opened the conversation by asking, "do you admit so and so?" He said "I demanded the money of you, or payment on this matter, at such and such times," specifying them, "and you have not done so, have not paid the money or any portion of it." He says, "if you don't pay the money down I shall sell to somebody else," and Mr. Hodgkins remarked "very well, if you can sell to somebody else you can do so," or words to that effect; do not pretend to give the exact words certain. I do not recollect anything further than that. This was somewhere between eleven and twelve o'clock, in that neighborhood; might have been eleven, might have been later, but it was about that time in the day. I have not had any conversation since then personally with Hodgkins, but I overheard a conversation, might be considered mutual, in connection with another party; that was August fifteenth, I think; I made a memorandum of it at the time. The parties to the conversation were Mr. Hodgkins and George S. Thomas; I think there was no one else in the office but myself. Mr. Hodgkins came in and Dr. Thomas made a remark something

like this, says he, "well, Mr. Hodgkins, your affidavit and mine do not agree very well." Mr. Hodgkins said no; then Mr. Thomas went on to make some remarks about it. "Well," he says, "the conversation is all right," the conversation in Mr. Thomas' affidavit. Mr. Hodgkins makes the remark to Dr. Thomas that "the conversation is all right, but," says he, "the date does not agree." "Why," says Dr. Thomas, "you recollect you were here Saturday." "No," Mr. Hodgkins says, "it was Friday; difference in the date, it was Friday;" says he, "didn't you know I was in here to inquire for Mr. Hancock and you told me he was over to Miller and Kimball's—I think it was Miller and Kimball—and I went right over there and met Mr. Hancock on the steps."

Objected to as being immaterial.

The affidavit referred to was one Mr. Thomas made in regard to a conversation that had taken place; I think some points of the conversation were repeated there as a matter between Mr. Hodgkins and Mr. Thomas, but I would not swear to that but it is a very strong impression it was. There was another point I recollect that was spoken about, that was in regard to the remark of Mr. Hodgkins, that Mr. Hancock might sell if he could to some other party. The affidavit in which Mr. Thomas had sworn was the one referred to in this controversy I understood. Mr. Hodgkins said that the conversation was all right, except it was Friday instead of Saturday.

Cross-Examination, by John S. Cooper, on behalf of Petitioners.

Am a general business agent; do any kind of business that offers in an office business; dry goods, stocks and bonds, or anything that offers as an office business, and I am competent to carry. Do not buy on my own account, simply as an agent; find buyer and seller; real estate or personal property. Been in Chicago, more or less, with the exception of two or three years, in the vicinity of fifteen or twenty years; been in the dry goods business most of the time on my own

account, and part of the time as salesman; been occupying an office with Bradford Hancock since about June — about the first of June; commenced being in business as agent about this time; no part of business has been buying and selling bankrupt stocks. I heard a great deal more of the conversation on Monday morning, July 12th, than I have repeated; repeated only what I distinctly recollect. I think it was ten o'clock when I went to my office that morning; might have been there at half past nine. Main office is about fifteen feet square; my desk is in the main office; Mr. Hancock's desk ten or fifteen feet from me. I was sitting at my desk during the time of the conversation, when Mr. Hancock came in, I think. Could not give you everything I did that morning. Met a party I was negotiating some business with, that had been in and out once or twice; could not tell the time the party came in, but he was running in and out there, backwards and forwards in the office. Train I came in that morning generally gets to the depot twenty or twenty-five minutes past nine; sometimes I get off at the Exposition building, in order to give me a little more time; I do not recollect that morning the place I got off there; came directly from the train to the office — takes about ten minutes to walk the distance. Could not tell whom I found at the office when I got there; a great many people come in and out; I could not say. I heard a good deal of the conversation, and I afterwards made my affidavit, and recalled the thing when it was fresh in my mind and I could fix it more definitely than I could now; that is the reason I remembered the conversation definitely, and cannot remember the other matters; I have never seen the affidavit since I made it; I presume the affidavit is nearer true than my present recollection; it was fresh in my mind at the time. I could not tell you how early this affidavit was made; it was after the question was raised about the sale that was talked over in the office, and I made my affidavit and stated what I knew definitely, and nothing further. My attention was called to this matter, the conversation that morning, because I overheard it; I could not help doing so in the small office; heard a great deal more than I have told you. Do not know anything about Mr. Crane;

never heard his name mentioned, and I do not know who he is. As far as Mr. Hodgkins is concerned, I knew him by seeing him in the office and hearing conversations; before that time I had never heard Crane's name mentioned, not that I recollect of. There were a great many other parties I heard mentioned; I heard Miller's name mentioned in this way; perhaps Hancock would be running out of the office and say, "I am going over to Miller & Kimball's office, and will be gone so long;" that is the only way I heard it. I do not know Mr. Carkin; I know Harry Fox; I have seen him in the office there very frequently. My impression is it was about eleven o'clock when Hodgkins came in; could not say definitely who was talking with the assignee that day besides Hodgkins; could not say there was not anybody else talking; he was in there perhaps fifteen or twenty minutes; no other person came in and joined in the conversation during that time that I recollect; do not remember of anybody else being there; Mr. Skinner and Mr. Thomas were there; do not recollect any others. [Mr. Crane pointed out to the witness.] I do not recollect of seeing Mr. Crane at all; I have heard of him recently, but I do not recollect of seeing him at all up to that time. I think I may have run out of the office once or twice after Hodgkins came, and gone perhaps ten minntes; I was there most of the forenoon; I think I was in the office when Mr. Hodgkins got through with his conversation, but I would not swear to it; I can swear I was there during the conversation. I was attending to my own business when the conversation was going on, and what I heard of the conversation was casual; I was reading a newspaper; that is part of my business; I was waiting for a party to come in that I had business with, and in the mean time was reading a newspaper. Do not recollect of the name of Mulligan being used. There was a conversation in which the term "wigglers in the water" was used; I have heard that expression a great many times. I can swear positively that I did not see Mr. Crane; as I sat I could not see him; I do not recollect of ever seeing Mr. Crane, if this is the gentleman (indicating Mr. Crane); he is a stranger to me.

In answer to the question as to whether his recollection about having seen Mr. Crane there that morning was as distinct and definite as to what took place between Hodgkins and Hancock, witness says: I do not recollect Mr. Crane, if this is the gentleman, and this is the first time I have ever seen him to know him, if this is Mr. Crane; do not recollect of seeing Mr. Crane there then, or any other time. Subject matter of this conversation has not been a matter of comment in the office between me, Dr. Thomas, and Mr. Hancock; never spoke of it, as I recollect. The matter of the conversation on the fifteenth of August, was another question, as I understand it; I look upon these different questions as two different points entirely. The question of swearing in regard to August fifteenth, is merely in regard to Dr. Thomas' interview, and that was a question between Dr. Thomas and Mr. Hodgkins; this other point is a point entirely different. I do not remember of the matter being discussed except at this time, at this instance, August 15th, and the matter was brought up by Mr. Hodgkins' and Mr. Thomas' conversation, that I recollect. Since that time, there may have been some casual remarks made, but it has not been a matter of remark; it has not been a matter I had any interest in. I may know Miller & Kimball, but I should not recognize them by name; it is possible they may have been in on that Monday morning, but I do not remember them by name, they are strangers to me.

In answer to the question why he cannot remember that these other three gentlemen were there, Kimball, Miller and Crane, as there was further conversation between Hancock and Crane, and can remember what took place between Hodgkins and Hancock, he answered: Well, sir, I can explain that very well; this is an office that is very small, and there is a great many people running in and out all the time; there is three different occupants in the office, and parties might come in to see one person and another, and I would pay no attention scarcely, but this matter I have heard talked of a good deal; my attention was directed to that, where it would not be to

any other business; there might be half a dozen in, and I would hardly notice them.

Q. But suppose these gentlemen came in, and joined in this conversation, and the conversation became a hot and excited one, and it was about the same matter Mr. Hodgkins and Mr. Hancock were talking about?

A. Well, I knew Mr. Hodgkins, and I would perhaps notice him particularly, when I would not notice two or three other persons standing around.

Had seen Mr. Hodgkins very frequently before that in the office, from the time the bids were being brought in; I took a note of the conservation of August 15, at time it was made, in my memorandum book.

Is asked to produce his memorandum book, and replies:

If it is required by the court, to introduce my memorandum book, I will do so; no objection to doing so; the reason I made that memorandum was, because I had made an affidavit in the case; I had made an affidavit in the case at that time; it was previous to August 15, I think.

Witness hands memorandum book to counsel.

Memorandum shows the date of the conversation as August 25; I believe I said August 15; that was an error of memory. Do not recollect of hearing Mr. Hodgkins use rough language towards the assignee; nothing that I would call high words used. I do not recollect of assignee saying to whom he sold the property; do not recollect whether the assignee said it was sold to Mulligan or not; do not recollect the name of Mulligan being used; would have heard it; did not notice Mr. Hodgkins producing any certified checks; my back was toward him most of the time; heard something about money, but I cannot swear to it. The reason I put down the memorandum of the conversation was, that I had made an affidavit in the case previously, and had took a little interest in the case from that, as far as that was concerned;

after making my affidavit, I paid more attention to what I heard, in regard to that; previous to that I paid no particular attention; it was what I casually heard, being none of my business at all; did not put down in my memorandum everything I heard that is of interest to me; kept the book for making memorandum that I wished to preserve; am not in the habit of making memorandum of conversations; this is the only memorandum about this case; I do not know whether there is in that book, from beginning to end, any other memorandum of any other conversation in any other case; it seems to me this is the case we are talking about; there may be memorandums of other conversations; I often make memoranda of anything I wish to refresh my memory about, at any time, and that I think would be of any use; this conversation would never be of any use to me; in all memoranda, I only put it down to refresh my memory, in case any question came up in regard to the affidavit I made, and I became a little more familiar with this case; do not have the least particle of interest in the case, pecuniary or otherwise, and did not have on the 15th of August, except to substantiate my words, as I made them in the affidavit. Hancock asked Mr. Hodgkins if he (Hodgkins) had not agreed to pay him the purchase money on Friday, and then rehearsed the matter, in giving Mr. Hodgkins the time—these conversations that he had had with him; said, "Didn't you say so and so?" and "Didn't you say so and so?" I do not understand that I said, on my direct examination, that Mr. Hancock did not say anything of the kind. Mr. Hancock asked him if he did not agree to do so and so, rehearsing the conversation they had previously had; I do not remember whether Hodgkins used any loud language; I did not regard it as extra loud conversation; I did not regard the admissions of Hodgkins as made in a joking way; I regarded it as business — business matters; I did not see the parties; I was not looking at them; I was sitting behind them; generally sit sideways. I knew this property had been sold about twelve o'clock, half past twelve; sometime between eleven and half past twelve; I could not state the definite time; I was not informed that it had been sold, by any one;

it was a matter of hearing conversation; nothing said to me at all; I had not known about the property being sold when I came into the office; my impression is, that I did not know it was sold to other parties until after Hodgkins left the office, but I am not certain; I think Mr. Hancock made the remark that the sale was made, and he had got the money; I could not tell who he made it to; it was made to some one he was in conversation with, and it was his business and not mine; I think Mr. Hodgkins was not there when the remark was made.

Mr. Cooper to Mr. Tenney. If it is consented to, the memorandum made may be attached to Webster's deposition.

Mr. Tenney. As long as it comes into his testimony, and wanted it done this morning, when the witness was here with it, but has gone away now, and the book is not here, and as he testified with it before him, to refresh his recollection, I do not consider it anyway material to take any further trouble about it, about taking a copy of it.

Mr. Cooper denies the statement of counsel, that witness testified with it before him, to refresh his recollection, the same being untrue; he did not refer to it except as to the date.

ABSTRACT OF DEPOSITION OF GRANVILLE S. THOMAS,

September 23d, 1875.

Examination by H. W. Tenney, on behalf of the Assignee.

Am acquainted with Bradford Hancock, and have met Jefferson Hodgkins. My place of business is room 8 Major Block; have a little corner off one side of Mr. Hancock's room. Have seen Mr. Hodgkins come in, from time to time, in relation to the

Fox & Howard estate; couldn't say first time I saw him, but think some time after Mr. Hancock advertised for bids. Think I saw him and somebody else there on Friday, the 9th of July, the day on which confirmatory order of sale to him had been made; think it must have been Friday, the 9th, but don't know the day the bid was confirmed; don't remember any circumstance occurring that day, except he came in there with somebody else; was busy about my own business and paid no attention; think it was between three and four o'clock; don't know what was said between him and Hancock at the time; didn't hear any other conversation that I remember.

Q. Anything said about paying the money on this bid?

Objected to on the ground that the witness has already stated that he don't remember anything about the conversation.

A. Not that day.

Q. Well, can you answer?

A. I don't remember what conversation occurred that afternoon, at all. Don't know how long Hodgkin's stayed there; am not positive whether I saw him again that afternoon. Saw him after he put in this bid, about the 2d of July; conversed with him there in regard to it. He said he had put in a bid of $40,000, and I told him I thought he would get it from what conversation I had heard, or the impression I had. He answered the way a great many men do, making a trade—rather independent, and didn't care whether he got it or not—if anybody would pay any more than he would, let him have it. Saw him on Saturday, the 10th; think he was there in the forenoon. Don't remember whether Mr. Hancock was there. Don't remember what conversation passed between Hodgkins and me there, or what the point of it was, or anything about what was going on there. If I remember correctly, Hodgkins came in again in the afternoon, when Hancock wasn't in, and nobody but myself. Told him if I was in his place, if I wanted to secure that bargain, I should pay something on it, if not more than $500; that Hancock was anxious to have

some money paid; he wanted to know where Hancock was, and I said he had gone to Mr. Miller's office; asked if I thought he would find him there; I said I guessed so, and he said he would go right down after him.

Q. Was anything said in regard to Hancock selling the property to somebody else, if he didn't pay immediately?

Objected to as leading, and because the witness has already stated the conversation.

A. I can't answer, for I don't know. The fact of it is, there has been so much talk about it. Know that then, or at some other time, there was such talk, because Hancock wanted to get the money and couldn't, and had gone out then to see if he couldn't find out something about it. Hodgkins left; don't remember that there was any especial conversation any way, further than what I have stated. Heard him talking in that independent way I have stated, before the sale was set aside, after he had put his bid in and before the confirmation, and then this Saturday. He said: "If he can find any better bid, sell it." Must have been in the office pretty late Saturday evening; remember that, because Hancock came back afterwards, and then went out and said he was going to find whether there was going to be any money paid on it; he came back quite late in the evening and says to me (objected to) "that sale depends altogether upon whether they are going to get up a company. I have found Hodgkins ain't the man at all;" Crane was the man. I remarked to him, says I: "Crane is a pretty good man—he will do what he says—that is his reputation." Says I, "I wonder, if they are going to get up a company, why I can't get in, if there is any money in it. I am in for anything I can make any money at."

Q. Are you sure that he told you that Crane was in it then—sure he mentioned Crane's name?

A. That is my impression—that he went to get the money, and that Hodgkins took him over to see Crane that Saturday

evening—that's my impression—the last thing Saturday evening, and it depended very much upon whether Mr. Hodgkins took the property, or something to that effect, or whether they got up a company or not.

Cross-Examination by John S. Cooper, Esq., on behalf of the Petitioners.

It was pretty near six o'clock on Saturday evening when Hancock returned and said Hodgkins wasn't the man at all, but Crane was. Think I left the office first that Saturday evening. Anson Fox hadn't come in at that time that I know of; didn't see him there; think I know him by sight. Harry Fox hadn't been in that I know of; didn't see anybody but Hancock. I left the office first, late in the afternoon. In fact, don't know I knew Anson Fox at that time. Remember that this was Saturday evening from the fact, he says: "Those fellows are going to come over and pay me some money Monday." He didn't mention any names.

Q. Did he mention that in connection with the remark that Hodgkins wasn't the man but Crane was, and they were going to pay him some money Monday?

A. He didn't mention any names of any parties, that I remember.

Q. Was it in connection with where Crane's name was brought in—that he was the man and Hodgkins wasn't.

A. Yes, sir; Hodgkins' name was mentioned. He didn't tell me any details of this company—who was in it. Don't know as he made any answer when I told him that Crane was a good man, and that I knew him by reputation. Must have been in my office nine o'clock Monday morning. Don't know Carkin—I have seen a man called Carkin. Hancock was in the office when I got there Monday morning, July 12th; think Webster was in the office then; don't remember whether Skinner was nor whether Carkin was. Hancock didn't say anything to me about the sale then, that morning—until later. Saturday afternoon,

when I told Hodgkins that the assignee was over to Miller's office (I didn't know that there was any Kimball at that time) he started as if going to find the assignee; that was the understanding when he left. Am as sure as I well can be, that this was Saturday afternoon; because we were alone there, and on account of this conversation about the fellow coming in Monday morning. Don't see how I can possibly be mistaken as to the date. Don't know what day the $40,000 bid was confirmed. My impression is, that this interview was not on the day of confirmation, but that it was after the confirmation that he was there, and I told him that Hancock had gone to Miller's office. I am positive, because I understand a sale can't be made until after there is confirmation, and I had understood that there had been a confirmation, and hence said, "If you want to secure that property you had better pay something on it." If the confirmation was Saturday morning, there is a bare possibility this talk was Saturday. Supposing the confirmation was at two o'clock Friday, I don't see how it could possibly have been that I told him on that day that the assignee had been over to Miller's office, from the fact of Hancock's going out and coming back again, and finally saying, "I am going to see if there is any bottom to this thing," and then going off I don't know where, and coming back late in the afternoon, and the conversation occurring in regard to those fellows going to come in Monday and pay him. Can't tell what I was doing on the day I had this interview with Hodgkins, and he went over to Millers office; my impression is I was balancing my books. I am real estate agent. Couldn't have balanced books next day, because, being Saturday, I went home. Don't remember what I do from one day to another.

Q. You say that Mr. Hancock told you that Crane was the man at the bottom of this, and they were going to bring in some money Monday morning?

A. Yes, sir.

Q. That is what he stated when he came back?

A. That's the way I understood him.

Q. Had he been to see Crane then? According to his own statement, had he been to see Crane at that time?

A. As I understood it.

Q. That he had been to see Crane at that time?

A. Yes, sir.

Q. And he was going to bring the money in Monday morning?

A. That's the way I understood it—that either he or somebody else—as he spoke of "those fellows"—those parties over there were going to bring him some money.

Q. Monday morning?

A. Yes, sir. If the assignee has sworn that when he came back from Crane's office, he found Anson Fox there, I should say it was barely possible that I was mistaken, but I don't think there was anybody in the office. Between the time of the assignee's going out to Miller's office and coming back from Crane's, I think he had been in, in the meantime, but can't state how long he remained. Don't know how long he was gone, when he returned first from Crane's office. Don't know if I ever heard that Hodgkins could get the property on his bid. My impression is, I heard something Friday afternoon about the court having awarded it to him on the payment of the money. It couldn't have been the same day this occurred that I heard of the thing, from the simple fact that at the time I heard of the confirmation, Hancock said to me, "they are coming in to-morrow" at such a time in the forenoon, "and pay me so much money on it." He said that late in the afternoon. I have no relations at all with Mr. Hancock; never talked business over together; never had any special conference about this matter. I took no interest in the sale of this property, and don't know why Hancock made these statements to me, any more than that when two men are sitting in the same office, one would be very likely to tell the other he had made a sale, so and so. Can't remember the conversation in which he told me that the property had been awarded to Hodg-

kins. We were not in the habit of talking our business over, one to another, except to a limited extent. I remember Hancock saying at one time—about the time he went out to see Crane—whether it was Friday afternoon or Saturday afternoon—he felt dissatisfied about the bid, from the simple fact they had not paid anything, and he was very anxious that they should pay something; don't know he ever expressed himself as being perfectly satisfied; the only dissatisfaction I ever heard him express was, that the parties hadn't paid anything to bind the thing.

Q. Did he express any such dissatisfaction as that, as you recollect, when he came back that night from Crane's?

A. That evening?

Q. Yes.

A. I don't remember that he did. When I told him that I knew Crane by reputation, and that he was all right, I don't know that Hancock made any remark in regard to it, whatever.

Q. What was your object in expressing that to him?

A. Nothing; only a man speaking of men here in town—we know them usually by general reputation. Didn't say it for the purpose of satisfying his mind that the matter was all right.

Q. You had no object of that kind in view whatever?

A. No, sir; nothing more than that Mr. Crane's reputation was that of a straightforward man.

Q. You knew Mr. Crane had this reputation of a straightforward business man—good for his contracts?

A. Certainly; I wish I had his contract for $10,000; I should feel pretty easy. Hodgkins, in the conversation referred to, didn't talk with me as the representative of Mr. Hancock at all. I didn't profess to represent him in any way at all.

Q. Why do you say you wish you had a contract with Crane for $10,000?

A. Because I think I should get my money on it if I did.

Q. You would like to have a contract, for the same reason, for $40,000?

A. Well, I think I should be perfectly safe in saying so.

To MR. TENNEY. Don't know that Hancock said who was going to bring the money Monday morning. He expressed himself as I have already stated. When he went out the afternoon in question, he said: "I am going to Miller's office to see if I can find Hodgkins."

To MR. COOPER. I don't think it possible for me to be mistaken regarding the day having been Saturday. I am positive the conversation I had with Hodgkins and Hancock occurred the same afternoon—quite positive.

DEPOSITION OF FARLIN Q. BALL,

SEPTEMBER 23, 1875.

Examination by H. W. Tenny, Esq., on behalf of Assignee.

Resides in this city, and is a practicing lawyer. I am acquainted with Bradford Hancock. I have met Mr. McBean, the father, and also the son. I cannot tell whether his name is Duncan or not. I remember of McBean's coming with me up to Judge Blodgett's room, in relation to a bid that had been made for the Fox & Howard property, but I cannot fix the date. I recollect it was in the month of July, and was Friday. I came up at McBean's request, with the younger McBean. The day that I came up with McBean was the day that Hancock was supposed to be about to apply for the confirmation of the sale, on bids that had been made for the Fox & Howard property. Mr. McBean and I were on this floor of this building, and we started down. On this floor, at the head of the stairs, we met Mr. Hancock coming up. There was a conversation occurred there between Hancock, McBean and me. As we reached the head of

the stairs I saw Mr. Hancock coming up and remarked to Mr. McBean that he was Mr. Hancock. We stopped at the head of the stairs, and Mr. Hancock came up the stairs with some papers in his hands, and either McBean or I asked Mr. Hancock if he was about to get the confirmation of any bid for the Fox & Howard property, that morning. His answer was that he had a better bid, and should not make application that morning for the confirmation of that bid, and he told us the name of a party who had made a bid for some ten thousand dollars better, as I understood then, than had been bid theretofore by any one for the whole property. I have forgotten the name of the party. I might know if re-called. Our conversation did not last over half or two minutes. The point I wished to ascertain was that no confirmation of the bid would be made that morning, and I went to my office. McBean and I went down the stairs; whether we went further together I don't know. I do not remember that this new bid was shown to us there; my impression is that it was not. The immediate thing in my mind was that there would be no confirmation that morning; that I remember very distinctly, because that was my object. I have no recollection of hearing Mr. Crane's name mentioned in that conversation, or the name of anyone, except the name of one party that had made a better bid than any one else.

Q. Did you hear Mr. Hancock tell Mr. McBean that this was Crane's bid, or that Crane was backing it up, or say anything about Crane?

A. I am quite sure that I did not hear the name of Mr. Crane and I am very sure that the name of Mr. Crane was not used as the name of this new bidder.

Q. Or as backing him up?

A. I can only say as to that that I do not remember.

Q. Of hearing his name at all?

A. Of hearing his name at all; but I am, as I said before,

confident that he was not the person who was named as the new bidder.

Cross-Examination, by John S. Cooper, Esq., on behalf of Petitioners.

The bankruptcy matters of our office are entirely in the hands of Mr. Bisbee of our firm; I understand he is in some way connected with General Stiles for Fox & Howard, or the petitioners that put them into bankruptcy, I believe, though I do not know whether they went in voluntarily or involuntarily; I do not know whether Bisbee had anything to do with the petition addressed to the court to have Hancock appointed provisional assignee or not; I did not have anything to do with it; went over to the court at the request of the younger McBean in the absence of Mr. Bisbee. I do nothing in bankruptcy matters except in the absence of Mr. Bisbee. I went into Judge Blodgett's court room; when I came up on this floor Mr. McBean accompanied me; it is my remembrance that it was at the head of the stairs on this floor that we met Mr. Hancock; McBean and I had not stepped down before Mr. Hancock had stepped on the floor below us, and then stepped up; when we started we went down the stairs, and he went along this floor from the stairs. I am quite sure McBean did not stop a moment with Mr. Hancock after I had started down the stairs, my recollection is, that Hancock turned and left us—walked away from us; my recollection is, that Mr. McBean passed with me to the stairs of our office; I am as positive about that as a man can be of a momentary circumstance, occurring in that way; that is that Hancock turned and left witness and McBean, and McBean and he went down stairs together. I was not interested in the name of the bidder who made this bid for forty thousand dollars. What I was interested in was that there was to be no confirmation of the sale that morning. That was the main thing that I was interested in. I was not interested to know whether the bid was made by Crane Brothers, Charles S. Crane or Hodgkins.

Q. Mr. McBean has sworn in this case that he has a definite

and distinct recollection that Mr. Hancock told him he had a better bid of forty thousand dollars of Mr. Hodgkin, backed up by Crane or by Crane Brothers; can you swear whether that thing occurred or not?

A. I would agree with him in all but the backing up by Crane Brothers, and as to that, I can only answer that I have no memory whatever. The reason why he thinks he would have remembered the backing part of the remark, if it had been made, was because it was connected with the bid itself.

Q. You say you were not interested in the bid particularly, but all you was interested in, was to know, and that you wanted to know whether there was to be any sale that day?

A. That was the point.

Q. Why were you interested in the backing up expression?

A. I cannot answer you except by stating this that my main object was to know whether or not that sale would be confirmed; he said it would not, and as a reason for saying so, he speaks of this bid made by a certain party. Now, I think that is indelibly impressed on my memory, and I think if there had been anything further attached to it I would have remembered it —simply it was attached.

Q. That's all?

A. That's all. I do not know the name of the bidder he gave; do not know whether he was financially responsible or irresponsible; I had confidence then, and have now, in Hancock, that he was a truthful man. When Hancock told me that the bid would not be confirmed that day, I believed it, and it was entirely satisfactory to me, that was the thing I was after. This was all I ever had to do with the Fox & Howard matter, coming up to the court house that day. I do not think I had any interest when Hancock told me he had a better bid, or who the bidder was, as to whether the bid was a good one or not. Didn't take any interest in that.

Q. You took it for granted when he told you he had a

better bid, that he had confidence in it, and that you supposed that he was a man of ordinary intelligence and your having faith in him you took the statement just that way and relied on it?

A. The statement I merely took, Mr. Cooper was that he would not apply for a confirmation of it; that he would put it off for one or two days. I must have supposed when the assignee told me he had a better bid, a bona fide bid, that it was true; had no reason to think otherwise.

Q. State as to whether the bid was backed up by other parties, or was not backed up by other parties, was a matter you did not take any interest in?

A. Not a particle, and it would not have impressed my mind, except as it was attached to a particular statement.

Q. When was this conversation first recalled to your attention?

A. Some time last week Mr. Hancock came to me at my office and asked me whether I remembered that conversation, and I told him I remembered something about it, and gave him about what I have given you. I have endeavored since to refresh my memory, but I cannot do it at all, and I think it is because I think I have no interest in this extraneous matter one way or the other. From the time this conversation took place, about the 2d of July, up to last week, I did not think of the matter.

DEPOSITION OF JAMES M. FLOWER,

SEPTEMBER 25, 1875.

Examination by H. W. Tenney, Esq., on behalf of Assignee.

Am a lawyer. One of the firm of Tenneys, Flower & Abercrombie. Have acted for the assignee in this case. I know Mr. Hancock. I have seen Mr. Hodgkins in connection with

this transaction. I have seen Mr. Crane since these proceedings commenced. Mr. Hancock is my brother-in-law. Married my own sister. He was asked whether he recollects Duncan McBean being in his office talking about the estate of Fox & Howard, some time about the first of July.

A. Somebody came in there on or near that date who I understood to be one of the McBeans. I do not know whether it was Duncan McBean or not. It was a man I had never seen before, and I do not know as I should know him if I were to see him. My impression is, when he came in I was drawing Hancock's report of the bids received, that was filed subsequently. Hancock brought over the bids with him, and he was discussing and remarking the nature and character of the bids, as to what we thought should be approved and recommended, and what we should disapprove of. It was in the course of that conversation, and drawing the reports just pointed out, that Mr. McBean came in. Just before that, Mr. Hodgkins had been in there, and one of the sons of John B. Ayer. Could not tell how long Hodgkins and Ayer had gone out before McBean came in, but think only a few minutes. Could not give the details of the conversation after McBean came in, because I was looking through the bids, and examining them, with a view to drawing the report. It would be impossible for me to give you any idea, more than a general one, what their conversation was.

Witness is asked to state, in general, what their conversation was about.

A. Well, Mr. McBean came in, I think, to see something about the bids, but what was said about that I could not tell. I would not pretend to give any part of that conversation.

Q. What I want to direct your attention to is this, whether Mr. Hancock, on that occasion, told Mr. McBean that Charles S. Crane, or the Crane Brothers, were interested in this bid in any way—this bid of Hodgkins' ?

A. If he did I did not hear it. I heard no such conversation as that, and I might say generally that I never heard Col.

Hancock speak of Mr. Crane having any connection with this matter at all until the day after the sale had been confirmed and the property delivered to Conro and Carkin. Up to Saturday afternoon, the tenth of July, I had been in daily, and I might say, almost hourly consultation with Col. Hancock in relation to this bid and the Fox & Howard estate. Left for Madison Saturday afternoon, and did not return until Tuesday. Up to the time I went away I do not recollect of ever having heard him mention Mr. Crane's name in connection with this purchase. Did not know anything about Crane being interested in it.

Q. Now did you hear the conversation that took place between Hancock and McBean in your office?

A. I won't pretend to say that I heard the whole of that conversation, but I do say this, that I think if Mr. Crane's name had been mentioned there in my presence, in connection with that bid, it would have struck me, because I knew the Crane Brothers generally being good, responsible men, and I should have felt there was a responsible man behind that bid. If such a conversation as that had taken place, I think the name would have struck me; I do not think it could have occurred there without my hearing it; of course I did not impress it on my memory and do not claim now to have impressed on my memory all that took place there. Hancock and McBean were both in the room with me. I was sitting at my desk examining the bids, preparatory to drawing the report. I do not know that I was in the middle of the desk between them, but I think the entire conversation took place within my hearing. Hancock was sitting at the end of the desk. Hancock could not have been more than four or five feet from me at the outside. Hancock was facing me. My impression would be that McBean had not been sitting down at all, but was standing on the opposite side. If Hancock had used that word, Crane's backing Hodgkins' bid, I should have heard it, and, I think, recollected it. I must have heard it, and I think I should have recollected it if used. Recollect Hodgkins coming in and withdrawing his bid a little while before. He said he wanted to withdraw his bid; did not propose to stand by it. Hancock said he

should report the bids as made. The report was so drawn. Hodgkins came in with Mr. Ayer.

Cross-Examination by John S. Cooper, Esq., on behalf of Petitioners.

I approved of Hancock putting in a report recommending Hodgkins' bid, on the first of July, after Hodgkins had withdrawn the bid. The reason was, because it was Hancock's business to report the bids as made. The bids had all been received and opened by the court. It was Hancock's business to report them, with some recommendation in relation to them. Had not given the question, as to the power of the court to compel a bidder at a judicial sale to complete his purchase, any thought at all. I did not stop at the making of the report to settle the legal liabilities of Mr. Hodgkins on that bid, but simply resolved to draw the report in accordance with the facts. Did not state in the report the fact that Mr. Hodgkins had withdrawn his bid. The report was in accordance with the facts at the time the bid was bid. I will state in connection with that, that before the report was actually filed, Hodgkins had taken into consideration the propriety of making a new bid; and I won't be certain, but my impression is, that that report and supplementary report on the forty thousand dollar bid accompanying it, were filed together; both filed together, and the bid of forty thousand dollars was filed as a supplementary report. The conversation when McBean was in the office and Hodgkins was in the office was on the first of July. The reason why the name of Crane Brothers would have attracted my attention if it had been mentioned generally in the office was because I knew them to be financially responsible. I did not know that Charles S. Crane was a member of that firm. There was several Cranes in the city, aside from the Crane Brothers. I understand there are now. I did not know it then. I did not know that there were any other Cranes in the city at that time, but the Crane Brothers. I did not know of Albert Crane at that time. Did not know anything of Hodgkins on the first of July, except in connection with this bid. Did not know anything of his financial responsibility. Did not know but he might be a

wealthy man. Did not know whether Hodgkins resided in Chicago or not. Supposed the bid was a bona fide one. It was a good one. I did not suppose a man would put in a twenty thousand dollar bid, whoever he was, without he was able to take it up.

Q. Then if you supposed Hodgkins was responsible, or had not any reason to the contrary, and supposed the bid was a bona fide good bid, why would Crane Brothers, do you think, have attracted your attention—their names?

A. Well, I should say for this reason: Crane Brothers' Manufacturing Company is quite a noted house. They are men a good deal known, and the house I know by reputation, and have for sometime, and if their name had been mentioned in connection with this bid I think it would have struck me. I do not know them personally at all, but I knew them as a house that did a large business and had a good reputation. This covered only a part of the property. This was in reference to the first bid of the first of July.

Q. Then would a bid of thirteen thousand dollars, made by a man of whom you didn't know but he was perfectly responsible, knew nothing to the contrary, and had no reason to suppose it was anything but a bona fide bid—would the name of anybody else in connection with it whom you knew to be responsible, attract your attention?

A. I have tried to explain all, because it was a name connected with a responsible house. If it had been Jones or Smith's name that had been mentioned in connection with that bid, it might not have attracted my attention at all, or any other name.

Q. Might not the name of Crane have been mentioned without attracting your attention as to what particular Crane it was?

A. I have not said it could be without attracting it. I say I do not think it could. I do not think Mr. Crane's name could have been mentioned without attracting my attention. I do not

think even the name of Crane could have been mentioned without attracting my attention. Never knew any Cranes here by reputation, except the Crane Brothers Manufacturing Company. I could not tell you even now the given names of the members of the firm, without Charles S. Crane be a member. I have heard he is not.

By Mr. Tenney. Assignee closed his testimony, with the exception of Mr. Thomas, whom he desires to call, to make a correction in his testimony, and whom he will call the first time testimony is taken in the matter, by Conro and Carkin.

DEPOSITION OF JAMES KAY,

September 24, 1875.

Examination by J. W. Tenney, Esq., on behalf of Assignee.

My name is James Kay; live on Lake Street, No. 53. I was formerly in the employment of Charles S. Crane. Up to the 6th of June of this year, I had something to do with his business, and a day or two after that; was frequently in and out of his store or place of business. I was solicitor and collector for Mr. Crane up to the 6th of June; I had nothing to do with his business since that time; I have had something to do to call me into his place of business; I was not in his place of business from the 6th of June to the 24th of July last; I could not say about dates exactly, but I was not on his premises during that time. I remember that I was not there during that time, perfectly well; I was in the city; I was not in Mr. Crane's office on the 10th of July. Mr. Hancock pointed out to witness, and he says he never saw Mr. Hancock before, that he remembers of.

EVIDENCE TAKEN

ON BEHALF OF

PETITIONERS IN REBUTTAL.

ABSTRACT OF DEPOSITION OF CHARLES S. CRANE,

OCTOBER 13, 1875.

Direct Examination by John S. Cooper, Esq., on behalf of the Petitioners.

Remember of being up in Enos Ayers' office, along in the week commencing Sunday, July the 11th. One of the creditors, I don't remember who, said there was going to be a meeting of the creditors, and wanted me to go up there, and I went with whomever it was; don't know at whose instance that meeting was got up, and that was the first I heard of it; remember seeing Estey there, but can't repeat any conversation I had with him; only stopped a minute or two; don't think he asked me anything about whether I was responsible for Hodgkins' bid; don't remember anything of that kind.

Q. Do you remember as to whether or not you stated to him in conversation, that you were not responsible for Hodgkins' bid, and didn't so consider yourself?

A. I didn't state any such thing, I know.

Cross-Examination by I. N. Stiles, Esq., on behalf of Conro and Carkin.

In my opinion my dredge has made a profit, over and above expenses, since the 12th of July last; can't tell how much without the books. The $40,000 I deposited in court was raised upon my own credit alone; had no arrangement with Miller and Kimball for their returning any portion of it, nor by which they were to pay a portion of it, in certain contingencies.

Q. What interest had they in the matter, anyway?

A. On the 12th of July, when I went to pay for this property, they were at that time to have one-quarter interest in it. Since then there has been no arrangement excepting what we have talked about since this settlement was talked of. I agreed they might have a quarter interest; nothing said to Conro or Carkin about that; the quarter interest was to be had by their paying a quarter of the money in cash, at the time the property would be paid for. Mr. Hodgkins was to have an interest to the amount of $10,000, and I was to furnish the money to him; was willing Mr. Fox should have an interest in the property, and in case he didn't take it I was going to; but at that time it wasn't decided who was to have that other half. I was going to control it, but was willing Fox should have an interest in it if he wanted. Hodgkins never stated to me that he was going to control his bid, or to anybody else, that I know of, nor did I ever hear that he did. Miller and Kimball were let into the arrangement because we thought they were good men to attend to the business, but there has never been any intimation to me that Conro and Carkin were to have any interest in it whatever. I first suggested the idea of Miller and Kimball going in—probably had known them for ten days—and I made that suggestion after the Skinner Hotel meeting, at which there was nothing said about their going in. I did not authorize Hodgkins to say to Conro that I didn't control that bid, nor that he was master of the situation, and that I couldn't control it—or similar language.

To Mr. Cooper. I took a check from the Crane Bros.' Manufacturing Co.'s Treasurer, to the First National Bank, and had it certified for that $40,000.

To MR. STILES. There were no entries on my individual books concerning that at all. The entries in relation to the dredge account, are upon my individual books and not the Company's books.

To MR. COOPER. The $40,000 is charged to me in Crane Bros.' books. It was the understanding at the hotel that Conro and Carkins were to have no interest in this property. Conro said several times that he had all the dredge property he wanted, and that it was a matter of helping Harry Fox. That is the way it was introduced to me. From the 1st to the 12th of July, Hodgkins had no means that I know anything about.

To MR. STILES. I should judge he was financially irresponsible. Known him about a year and a half.

J. HODGKINS *Re-called.*

To MR. COOPER. From the 1st to the 12th of July, of this year, I didn't have anything to amount to anything, less than $1,000.

ABSTRACT OF DEPOSITION OF ARCHIE NORTHRUP.

OCTOBER 12TH, 1875.

Direct Examination by John S. Cooper, Esq., on behalf of the Petitioners.

Reside in Chicago; book-keeper for Conro, Carkin & Co.; have been since the first of August; up to the first of August was keeping books for Fox & Howard, under the supervision of Mr. Harry Fox; kept their cash-book, journal, ledger and day-book. Conro & Carkins are contractors for public works; now have dredges at work on the river for themselves, working for the city of Chicago; they have been engaged since the first of August in building docks for various parties. Mr. Anson Fox has general management of the outside business, and Harry Fox is the general superintendent. My duties consist in keeping the books;

get the most of the items from the diaries of the various dredges and pile-drivers, on the first of the month, which are kept on the dredges, and returned to me then. I make corrections and charge or credit parties. Haven't posted the cash-book from the first of October; but, from the ledger I find the total cash receipts up to the first of October are $11,444; from the cash-book I find we have received $16,000 or $17,000 since the first of October, —making some $27,000 or $28,000 in all.

Can hardly tell from expense account how much expenses have been, because they are under different heads. Got no profit and loss account, as yet. Can't tell what expenses have been without trial balance, which we took the 10th of September—the 10th of every month; haven't one for the 10th of this month, because was engaged in paying.

The last entry on page 16 of ledger, account of Harry Fox, under date of October 1st, I made by Mr. Harry Fox's direction; simply obeyed orders; nothing went out of the office in the way of check or draft to correspond with that entry; made entry on journal October 1st, pursuant to his direction.

The several items in the journal, aggregating $9,000 in the ledger, represent dredging work for the city of Chicago; that money was not paid for dredging; this is just the entry in which the city of Chicago was charged to Mr. Fox. There is an item in the cash corresponding with that item, which cash I received on the 6th of the month from the city of Chicago in certificates, which were discounted, and the proceeds of which I received and put in the bank; it appears on page 6 of cash-book.

Mr. Harry Fox, Mr. Carkin and Mr. Conro drew the checks.

By Mr. Conro: I think I have never signed any checks.

By the Witness: Mr. Carkin and Mr. Fox have given me all the checks.

Kept a cash-book, which shows cash, so far as it went into and was drawn out of the bank; don't know there has been any cash outside of that going into the bank.

Don't think Harry Fox has been paid anything by Conro, Carkin & Co. [Examining Ledger.] He has $48.00; the item under date of August 26th, with $608.23.

His account in the concern of Conro, Carkin & Co., is credited since the 1st of August with $9,759.65. Conro is credited with $13,500, and Carkin with $1,588.70. Conro, Starkie & Co. are charged with $17,495. No, they are credited, and I have charged them $4,000 on the cash book, not yet posted. The credit of $13,500 goes in each case to make up their credit; that was for an entry made charging capital stock—the purchase price of this property. That money never came into the office. Conro, Starkie & Co. have paid into the firm of Conro, Carkin & Co., $4,500. Albert Conro has paid into the firm of Conro, Carkin & Co., $13,500. I never knew it was paid. Willard S. Carkin paid into the firm of Conro, Carkin & Co., $2,400. Conro has drawn out nothing. Carkin is charged with $824. The firm of Conro, Starkie & Co., have drawn out $530. Conro, Carkin & Co.'s bank balance is now about $6,200; about $7,000 has been paid for labor, and Anson Fox $41. Have general expense account which shows sundry expenses, scarcely classifiable. It amounts to about $110. Have a dredge account; there is a balance charged to it of $800, paid out. Had been in Fox & Howard's employ three years before bankruptcy. Kept Harry Fox's private account part of the time. Turned those and the firm books over to assignee. Don't remember making any entry in Harry Fox's private books of the proceeds realized from the sale of his livery stable. Know there was no such entry made in them by me in his rent books, which I then kept. Believe he kept some books at his stable. There are no earnings of property that are not posted to cash in the books. Everything collected has been posted. $27,000 or $28,000 is simply the cash collected, and there is one item of work on the Madison street bridge of perhaps $3,000 or $4,000, which has not yet been collected, nor have the earnings of the dredges and other machinery from the 1st of October to date, gone into these books yet. I only explain to you to the 1st of October.

Judge Blodgett's Decision.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN THE MATTER OF FOX & HOWARD, BANKRUPTS, PET. HODGKINS & CRANE. } *In Bankruptcy.*

Decision by Blodgett, J., March 3, 1876.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN THE MATTER OF FOX & HOWARD, BANKRUPTS. } *In Bankruptcy.*

On motion of J. Hodgkins and C. S. Crane, to set aside sale of personal property to Conro and Carkin.

The firm of Fox & Howard were for several years prior to the fifth day of June, 1875, engaged in business in this city as contractors for public works, such as the construction of docks, piers, canals, railroads, and on the said fifth day of June said firm and the members thereof were adjudged bankrupts upon a petition in that behalf, filed by certain of their creditors, and on the sixteenth day of June, Bradford Hancock was appointed provisional assignee of said estate.

At the time of their adjudication said firm was possessed of a large amount of plant and property used in their business, such as dredges, tug-boats, scows, pile-drivers, etc., and

on the nineteenth day of June the provisional assignee, at the instance of a large number of creditors, was directed to advertise that he would receive sealed bids for said property, as a whole or in parcels, until the first day of July, at which time said bids should be opened in the presence of the court, and said property sold to the highest and best bidder. Due notice was published, in pursuance of said order, and Jefferson Hodgkins put in a bid of forty thousand dollars, cash, for the whole of said property, as inventoried, which was the highest bid made; and said assignee recommended that the same be accepted. An order was accordingly made that all persons interested in the estate should show cause, on or before the ninth of July, why said bid should not be accepted by the court; of which order notice was duly given to all of the creditors, and, no objection being shown, the court, on the ninth of July, entered an order confirming the sale of said property to said Hodgkins, and directing the provisional assignee, on the receipt of the amount of said bid, to deliver said property to said Hodgkins and to execute to him a proper bill of sale, to pass to said purchaser all the right and title of said bankrupts and of said assignee to said property. On the 12th day of July the provisional assignee reported to the court that he had presented said Hodgkins with a certified copy of the order of the ninth of July, confirming said sale, and had demanded of the said Hodgkins payment of the said sum of forty thousand dollars purchase money, or a sufficient deposit, on account thereof, to secure said sale, and had offered to deliver the said property to said Hodgkins; that Hodgkins had failed and neglected to make said payment, or make any deposit or payment on account thereof.

The assignee further reported that he had received from Conro & Carkin, a bid of $40,500, in cash, for said property, subject to certain charges for custodian's fees and other expenses, and the interest of one Anson Fox in certain of said property, and prayed that the said order of sale to Hodgkins be set aside, and that the assignee be authorized to accept said bid of Conro & Carkin, and sell said property to

them. Without directing notice of said application to be given to Hodgkins, the Court set aside the order of sale to him, and directed the assignee to accept the offer of Conro & Carkin, and at a later hour of the same day, said Conro & Carkin paid to said assignee, the amount of their bid, $40,500, and he delivered the said property to them, subject to custodian's charges, and the claim of Anson Fox as stated. On the day of July, said Hodgkins and C. S. Crane applied to the Judge of the Circuit Court for a review of the action of the District Court, and prayed that the order of the District Court of the 12th of July, setting aside the sale to Hodgkins, and directing the sale to Conro & Carkin be reversed; and on the 13th day of August, the Judge of the Circuit Court entered an order, directing the District Court to "open or set aside said order of the 12th of July, and to give the said Hodgkins or said Crane an opportunity to be heard upon the application of the assignee to set aside the order of July 9th." On the 18th August said Hodgkins and said Crane, filed in the District Court, their petitions, setting forth in substance, that said bid of said Hodgkins was made for and in behalf of said Crane, that said assignee knew said fact, and knew that said Crane was ready and willing to make paymeut, and that said assignee had given Crane until the morning of the 12th of July, in which to make a deposit sufficient to secure said purchase; that on the morning of July 12th, said Crane and said Hodgkins soon after banking hours, proceeded to the office of assignee, with the sum of twenty thousand dollars for the purpose of making payment on account of said purchase, and receiving from said assignee, the papers necessary to vest title in them, pursuant to the order of July 9th; that, on arriving at the office of the assignee, they were informed that said property had been resold to Conro & Carkin.

The petition further alleged that the application of the assignee to set aside the order accepting the bid of said Hodgkins, and asking authority to make the sale to Conro & Car-

kin was made in fraud of the said rights of Crane and Hodgkins, and with full knowledge on the part of the assignee that Crane intended, in good faith, to carry out the said bid of Hodgkins; that, in applying to the Court to set aside said order of sale of the 9th of July, and seeking an order authorizing the acceptance of the bid of Conro & Carkin, said assignee was acting in collusion with Conro & Carkin and the bankrupts, for the purpose of defrauding said Hodgkins and Crane out of the benefit and advantage of their said bid.

The petitioners further allege that they deposited in Court, on the 17th day of August, the sum of forty thousand dollars, to pay the amount so bid by said Hodgkins. The petition then prays that the assignee, Conro & Carkin, Fox & Howard, and each of them show cause why said property should not be delivered to said petitioners, why the order of July 12 should not be vacated and set aside, and why Conro & Carkin should not pay over to petitioners the value of the use of said property since the 12th of July; and that an order be entered vacating the order of July 12, and directing Conro & Carkin, Fox & Howard, and said assignee, to deliver said property to said Hodgkins and Crane, and pay to them all moneys which said Conro & Carkin and the said bankrupts, or either of them, have realized from the use of said property since the said 12th of July, and the value of the use of said property since the said time, a rule to show cause was entered; and the assignee answered in substance that on the 9th of July, after the entry of the order of the court confirming said sale to Hodgkins, he notified said Hodgkins of said order, and demanded payment of the purchase money; that, at the time said bid was made, and at the time the same was confirmed, said assignee had no knowledge or notice that Crane had any interest in said bid; that, on the 10th of July he heard, for the first time, that Crane was to furnish a part of the money, but did not learn that the bid of Hodgkins was for or on behalf of Crane, or that Crane was in any way legally bound for the bid; that, in an interview with Crane on the evening of the 10th of July, which was Saturday, Crane promised to see that a deposit was made

the first thing on Monday morning; that Hodgkins was wholly irresponsible, and his bid totally worthless; that in view of the facts that Hodgkins was irresponsible, and that Crane was not legally bound to fulfill his promise the of Saturday night, he, the asgignee, sought Conro & Carkin, and obtained from them, on Monday morning, the 12th of July, the bid which was submitted to the court, because he said he did not believe said Crane was acting in good faith; that the sale to Conro & Carkin was fully completed, the money paid, and the property delivered on Monday morning before said Crane appeared and offered to make any payment on the Hodgkins bid.

Conro & Carkin appeared and answered, in substance, that they were *bona fide* purchasers of the property after being informed that said Hodgkins had made default in the payment called for by his bid; denied that Fox & Howard, or either of them, had any interest in said purchase; also suggested that inasmuch as they, Conro & Carkin, were strangers to the bankruptcy proceeding, the several matters in question in such proceeding could only be heard, investigated and adjudged as against them, Conro & Carkin, by proper suit at law or in equity, according to due course of law, and that this court could have no jurisdiction in this form of proceeding to adjudge any relief to the petitioners against them, the said Conro & Carkin. On the 15th of September the petitioners amended their petition, by leave of court, by charging that Conro & Carkin had made a profit of at least six hundred dollars per day since said 12th day of July by the use of said property, and praying that they might be charged as trustees for the petitioners, and account for and pay over to them all profits realized from the said property. Upon the issues made by this petition and the answer of the respondents, voluminous proofs have been taken, and the various questions of law and fact fully discussed before the court. The order of the circuit court directs the district court to open the order of July 12th and let Hodgkins and Crane in, to be heard upon the application of the assignee to set aside the order of July 9th, confirming the sale to Hodgkins, or, as I understand it,

the learned circuit judge was of the opinion, upon the showing made before him on the review, that this court should have required notice to be given to Hodgkins and Crane before acting on the application of the assignee to set aside the Hodgkins bid and accept the Conro & Carkin bid. The order of July 12th has been opened, both parties have been heard upon the facts, and the question is: Shall this court now set aside the order of July 12th? or rather, would this court, if it had, on the 12th of July, been advised of all the facts which now appear in evidence, have set aside the Hodgkins bid and directed the assignee to accept the Conro & Carkin bid? Certain facts are either admitted or are undisputed in the record.

1st. That Hodgkins was wholly irresponsible, and had no means with which to make the payment called for by his bid.

2d. That he had notice on the afternoon of the 9th of July, before close of bank hours; that his bid had been accepted by the court.

3d. That the bid of Conro & Carkin is, at least, two thousand dollars better for the estate of the bankrupts than the bid of Hodgkins.

There is much conflict of testimony, as to whether the assignee knew, at the time the Hodgkins bid was put in, that Crane was interested in it, or, as counsel for petitioners quite ingeniously puts it, "that Crane was bidding through Hodgkins, as his agent." The view I take of the law, however, makes this question of fact wholly immaterial, as it is quite clear to me that nothing has thus far been disclosed which made the Hodgkins bid legally binding upon Mr. Crane. I know of no rule of law by which Mr. Crane could have been made responsible, upon the facts of this case, for the money called for, by the Hodgkins bid. Hodgkins could, undoubtedly, have been sued at law for the amount of his bid, and, if responsible, it could have been collected from him. He had placed himself sufficiently within the jurisdiction of the court,

perhaps, to be amenable to it, by summary proceedings, but it was not so with Crane. According to his own testimony, he at no time acknowledged the bid in such a manner as to legally bind him to its performance. The bid was the bid of Hodgkins, and all of Mr. Crane's promises, in recognition thereof, were void by the statute of frauds. So that it seems to me wholly immaterial, legally, whether the assignee knew, at the time the bid was made, or at any subsequent time, that Crane was interested in it. If he did know, as a fact, that Crane was backing Hodgkins, as some of the witnesses say, he must be, also, legally charged with the knowledge that Crane had not, thus far, assumed any legal liability. I think, however, that the question of Hancock's knowledge on this subject, and the time when he acquired that knowledge, is of some consequence, as bearing on the question of his good faith in this matter. There is testimony, on the part of the petitioners, tending to show that Hancock knew, when the Hodgkins bid was received, that it was made on behalf of Crane, or that Crane was to furnish the money. This is denied by Hancock, and I think the preponderance of the proof is, that he did not know that Crane had any interest in, or connection with, the bid until after the order accepting the Hodgkins bid was entered. He then, at the request of Hodgkins, called on Crane to see about payment, and Crane promised to call and make a deposit on account the next Monday morning.

The facts are, then, briefly these, from the proof and admissions: Hodgkins, on the first of July, bid forty thousand dollars for the property; his bid was the highest, and no objections being made by creditors, after notice, the court, on the 9th of July, directed the assignee to convey all the interest of the estate in the property in question, to Hodgkins, on the payment of the forty thousand dollars. Hodgkins was, at least, constructively, before the court, and he had ample notice that his bid was accepted about two o'clock in the afternoon of the 9th. He made no tender or offer of any money, although the assignee had sought him for the purpose of notifying him of the acceptance of his bid, and to close the sale.

During the next day, the tenth of July, Hodgkins made no effort or offer to close the sale, but finally, at the request of the assignee, accompanied the assignee to the office of Mr. Crane, late on Saturday afternoon, and there the conversation took place, in substance to the effect that he, Mr. Crane, expected to take an interest in the property, if certain other parties took hold of it also, and was willing to put up a deposit for the purpose of binding the bargain until the negotiations between the other parties and himself, could be concluded, and until he could be satisfied that the property would all be delivered to him, and promised, verbally, that he would make such deposit, without naming any amount, the next Monday morning. Hancock, in the meantime, had ascertained that Hodgkins was wholly irresponsible. Was the assignee bound, in the light of these facts, to await the action of Crane, on Monday morning? And when he received the offer of Conro & Carkin, was he bound to notify Crane and Hodgkins, before asking the court to accept the latter offer? It seems to me, a few well established principles will settle these questions.

1st. Hodgkins was bound to pay, on notice of the acceptance of his bid. He had ample notice, and had neither paid nor offered to pay. The sale was in the nature of a sale at auction, and Hodgkins was the highest bidder, and was, of course, only entitled to notice that his bid was accepted, before he was bound to make payment.

2d. The assignee had no authority to give either Hodgkins or Crane, time on the bid, and any agreement for time between the assignee and the bidder, would have been void. The sale was for cash, and like any other bid, at a public sale, (for this was, essentially, as I have said, an auction sale,) the bidder must be ready to comply, the moment the property is struck off to him, or the property can be put up and again sold.

3d. Crane was not bound by his promise, made on Saturday night, to make a deposit on Monday morning, and had,

in no way, made himself a party to the bid, so that it could have been enforced against him. Suppose, therefore, the assignee, on the Monday morning, had represented just these facts to the court: "Hodgkins is wholly irresponsible; he has had notice of the acceptance of his bid, but neglects to make payment. Mr. Crane states, verbally, that he expects to take an interest in the property; that the bid was made for him, by Hodgkins, and he will make a payment, on account thereof, on Monday morning. Conro & Carkin have offered what is equivalent to two thousand dollars more, for the property, than what Hodgkins offered," and, on notice, the parties had appeared before the court Monday morning. Admitting these facts, would the court, under the circumstances, have done differently from what it actually did on the *ex parte* statement of the assignee, on the 12th of July? For my part, I am compelled to say that I think any court ought to have set aside the Hodgkins bid, upon the facts disclosed in this case. Mr. Crane's connection with the transaction was not such as to entitle him to the protection or regard of the court in any aspect. He had, by his own showing, put forward a man of straw to bid upon the property, in order that he might take it, if he could make a speculation by selling the bid to others, or let the sale fall, as best suited his own interests, and that, too, without incurring the risk of personal responsibility. The position now assumed, that Hodgkins was the agent and Crane the principal, and that Crane was therefore legally bound for the bid, is, I think, wholly an after-thought of counsel, and that Mr. Crane did not himself intend to occupy any such relation as would have enabled the court, under the facts proven, to have enforced the bid against him. Under such circumstances, I think no court would have felt bound, by any rule of law, to consider him as rightfully before the court, or entitled to any notice or protection. Believing, therefore, that if I had had all the facts before me, and known all the facts on the twelfth of July, that are disclosed by the proofs in this case, I should have done substantially what was done, at that time, on the *ex parte* showing of the assignee, it

hardly seems necessary to go further in the consideration of the case.

But it was urged, with much earnestness in the argument, that the evidence showed a fraudulent collusion between the assignee and Fox, one of the bankrupts, and Conro & Carkin, to make this second sale, and that it should be set aside for this reason. Upon this point the evidence shows that on Saturday evening, after Crane had promised to make the deposit the next Monday morning, Hancock, the assignee, told Anson Fox that Hodgkins had not completed the purchase, and he doubted whether he intended doing so. The next afternoon word was sent to Hancock that Carkin wanted to see him at Fox's house. He accordingly called there, and Carkin and Hancock had some conversation in regard to the condition of the dealing between the assignee and Hodgkins, and Hancock told him in substance, that he did not consider himself bound to let Hodgkins have the property, especially if a better bid was made by any one else. The next morning Conro & Carkin made their offer to the assignee and he submitted the same to the court. I think it apparent from the proof that Hancock, by the talk he had with Anson Fox, and in his subsequent interview with Carkin and Harry Fox, invited, or intended at least, to be understood as inviting the bid from Conro & Carkin. But I fail to see how this is to be construed into a fraud against Mr. Crane, for the reason that neither Hancock or the court was under any obligation to Crane. Crane had given no binding obligation in regard to the payment of the bid on Monday morning, and while he left himself free to close the trade or not on Monday, certainly Hancock had the same right to look elsewhere for a purchaser, I do not see how Crane has any standing to complain of bad faith. The facts show that Mr. Crane was playing Hancock upon the line with Hodgkins' bid until he could see a profit in stepping into Hodgkins' shoes and close the trade if he saw fit to do so, and I cannot see that Hancock was bound to stand by and be trifled with.

The evidence clearly shows that Crane, between the time that the bid was made and the 12th of July, had been in negotiation with Harry Fox, with Conro & Carkin, and with Miller and Kimball, in regard to the disposition to be made of this dredge property. Crane was, himself, the owner of one dredge, and he stated in some of the interviews had with the other parties, that his purpose in making the bid was, either to increase the amount of his interest in the dredging business or else to sell out what property and interest he already had in that business, and he went so far in one interview at Skinner's Hotel, as to offer that, if Conro & Carkin would buy his dredge at a certain price — eleven thousand dollars — he would allow the Hodgkins bid to fall through, and step out of the way, so that Conro & Carkin might buy the property at their own price; and at the interview between Mr. Hancock and Mr. Crane, on the afternoon of July 10th, it was stated that Miller and Hodgkins had gone to Milwaukee for the purpose of seeing Conro, who resided there, to see what arrangements could be made in regard to the formation of a company, to take charge of this dredge property, it being stated further that the parties owning this Fox & Howard dredge property were substantially "masters of the situation," so far as the dredge business was concerned, in this and the adjacent cities. With these facts before us, it can hardly be said that Mr. Crane is in a position to complain of Hancock for having sought other purchasers for this property. He was, himself, acting in bad faith, and his conduct, as I have already said, in putting Hodgkins, a mere figure-head, forward for the purpose of making this bid, and holding the property upon a string while he made his negotiations in his own interest, is not such as to commend him to the protection of the court. I do not know what facts were before the Circuit Judge on the review, but am bound to assume that npon the case made before him he was of opinion that Hodgkins was entitled to notice before the order accepting his bid was set aside; but I am compelled to say, that if he had had notice, and on a hearing the facts had been disclosed which now appear on the record, I should

have considered his rights under his bid as forfeited by his own negligence, and the court, through the assignee, at liberty to receive any other bid, especially a bid so much more to the advantage of the estate. Even if Crane had come forward on Monday morning, on notice, and offered to make Hodgkins' bid unequivocally his own, by a written stipulation or guaranty, or by the payment of the money in full, at that time — which he did not do — the court was not bound to accept it, because he had been guilty of unfairness toward the court, by making his bid under the cover of an irresponsible person, and because the court had then before it a better offer, which was much more for the interest of the estate.

It will be noticed on a close scrutiny of the testimony, that in the interview between Mr. Crane and Mr. Hancock on the evening of the 12th, when Mr. Crane assumed that he would make the payment on Monday morning, or promised to do so, he only proposed to make a deposit until he could see whether the property suited him, and whether it would all, or could all, be delivered. He seemed at all times willing to "keep an anchor to windward"—to save himself from fully complying with the terms of this bid, until he had completed his negotiations with these other parties, and determined his own action in relation thereto, namely: whether he would, himself, take the property under Hodgkins' bid, or allow the Hodgkins bid to fall through, and let Conro & Carkin buy the property at their own price. The court, therefore, refuses to set aside the order of July 12th. This conclusion renders it unnecessary for the court to consider the other phases of the petition, asking for relief against Conro & Carkin, as it would only be necessary to consider that, in case of the sale being set aside.

By Mr. Cooper. If the court please, on behalf of the petitioners, I desire to except to the decision of the court, and inasmuch as the parties are all present, I now give the

notice of our intention to immediately apply to Judge Drummond, on petition for review.

BY THE COURT. Very well.

BY MR. FLOWER. It seems to me there was some law of court made in relation to the question of costs. I don't exactly know how that is, or how it can be arranged, unless your Honor make some order to save the estate the costs from the prosecution of this petition—and there is a large amount of costs.

BY THE COURT. The parties gave a bond for the costs; that is still held by the court, and is entirely responsible, and in addition, there is forty thousand dollars of Mr. Crane's money in court, and I rather think that is good for the costs.

BY MR. COOPER. I suppose there will be no disposition of the matter of costs until the final hearing before Judge Drummond.

BY MR. AYER. I suppose that unless costs follow, necessarily, from this decision, there should be an order.

BY THE COURT. The order will be—to dismiss the petition, with costs, and then, of course, the only question will be whether this decision will be affirmed by the circuit court. This court dismisses the petition.

BY MR. AYER. At the cost of the petitioners?

BY THE COURT. Yes, sir, at the cost of the petitioners.

This Book was not used in Circuit Court, but Contains Opinion of Court substantially, as same is in Record in Supreme Court at pages 427 to 446, and Final order Pages 80 to 82.

4-441

U. S. CIRCUIT COURT,

FOR THE

7th JUDICIAL CIRCUIT,

NORTHERN DISTRICT OF ILLINOIS.

In the matter of
HARRY FOX AND WM. B. HOWARD,
BANKRUPTS.
In Bankruptcy.

PETITION FOR REVIEW.

CHARLES S. CRANE, and
JEFFERSON HODGKINS,
Petitioners,

VS.

ALBERT CONRO,
WILLARD S. CARKIN,
HARRY FOX, and
BRADFORD HANCOCK, Assignee,
Respondents.

SUPPLEMENTAL RECORD,

CONTAINING THE DECISION OF THE HON. THOMAS DRUMMOND, CIRCUIT JUDGE, AND THE FINAL ORDER OF THE CIRCUIT COURT ON THE PETITION OF REVIEW.

CHICAGO:
HAZLITT & REED, LAW PRINTERS, 172 AND 174 CLARK STREET.
1876.

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CHICAGO:
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1876.

IN THE

Circuit Court of the United States

FOR THE

NORTHERN DISTRICT OF ILLINOIS.

In the Matter of
Fox and Howard
Bankrupts.
Petition of
Conro & Carkins.
} *In Bankruptcy.*

DECISION BY DRUMMOND, J.,
April 10, 1876.

The consequences of delay in the decision of this case are so serious that I have come to the conclusion that I would dispose of the petition in review at the earliest practicable moment.

It is objected that it is improperly brought into the Circuit Court, under the second section of the original Bankrupt Law (Sec. 4986 Rev. Stat. U. S.), which provides for a review of any decision of the District Court, and which declares—

"The Circuit Court for each District shall have a general "superintendence and jurisdiction of all cases and questions "arising in the District Court for such district when sitting as "a Court of Bankruptcy, whether the powers and jurisdiction

"of a Circuit Court have been conferred on such District "Court or not, and except when special provision is other- "wise made, may, upon bill, petition or other proper process, "of any party aggrieved, hear and determine the case as in a "court of equity."

This law provides for the superintendence and jurisdiction of the Circuit Court over all cases and questions arising under the act; and unless special provision is otherwise made, it declares how the court shall exercise this supervision and jurisdiction. Therefore, unless the law has provided elsewhere for an appeal from the decision of the District Court in this case, it must necessarily come up under the second section of the Bankrupt law. (Rev. Stat. Sec. 4986.)

It is not necessary that I should go into a history of the case; that has been done by the District Judge. It is only of importance that I should state the fact that Fox & Howard, having become bankrupts, and a provisional assignee having been appointed, on his application to the District Court he was directed to receive bids for the property of the bankrupts; and he accordingly received a bid from J. Hodgkins, on the 2d day of July, 1875, for certain property of the bankrupts, for which Hodgkins agreed to pay the sum of $40,000. An order *nisi* was thereupon entered by the District Court requiring all parties to show cause why that bid should not be received, and on the 9th of July following the same was confirmed to Mr. Hodgkins. On the 12th of July following, on application of the assignee to the District Court, this order of confirmation was set aside and another bid was received and confirmed to other parties on an advance in the price, $40,500, and the sale was confirmed to them and the money paid, and the property turned over to the new purchasers.

It is these sales and confirmations made by the District Court that are the subject of controversy here. And the point is: whether or not there is provision otherwise made than in the section already referred to, for the appellate jurisdiction

of the Circuit Court over this action of the District Court. I think there is not.

This is simply a sale of the property of the bankrupts. And the question is, whether the sale shall stand as the act of the court, and the property of the bankrupts pass to the purchaser. It is not such a decree or judgment as is provided for in the eighth section of the original bankrupt law (Rev. St., sec. 4980), which gives an appeal or writ of error; and unless there is an appeal or writ of error given elsewhere than is provided in the third section, then it necessarily follows that the Circuit Court must exercise superintendence and jurisdiction over the case under that section.

It is apparent that the question whether or not a sale of the estate of a bankrupt shall stand, is one of the greatest importance. Upon it may depend not only the rights of the bankrupts, but the rights of all the creditors. And it is manifest that the statute intends to give the Circuit Court superintendence and jurisdiction over such cases. It would be a serious matter to hold that the order of the District Court as to the validity of a sale of the property of a bankrupt is necessarily final, and that because the District Court has confirmed the sale and turned over the property to the purchaser, and received the money, therefore there is no power in the Circuit Court to interfere with it. That would be a very simple way of depriving the Circuit Court of jurisdiction over a case, and it might well happen that property might be sacrificed and the rights of creditors jeoparded by the action of the District Court.

It is manifest, I think, therefore, that it was the intention of the bankrupt law to allow the Circuit Court to have jurisdiction over all cases of this kind; and inasmuch as an appeal or a writ of error is not elsewhere given, the right of supervision and jurisdiction must exist under the second section of the bankrupt law.

It is said that in this case there has been no record, or, at

least, no full record brought into the Circuit Court, and that the court has not considered the full record upon which the District Court acted. That is true; but it is nothing more than fair to state the circumstances under which the record is brought before this court. A printed abstract of the testimony has been introduced, all of which the court has read. The court has not read all the original testimony, of which this is a full abstract; but the case has been submitted to the court upon this abstract and was argued, in part, upon the abstract; and it was not until after the case was partially heard, that objection was taken by some of the counsel to the fact that this was not a full record; but, as I understand, it was submitted to the court upon this abstract for convenience, and to save labor and trouble to the court, with the understanding, on both sides, that if there was any error or mistake in the abstract it might be corrected by reference to the original depositions or testimony in the case. I so understand it. And if there is any material error in this record or abstract as it has been presented, of course I desire it to be rectified; and I wish to state to counsel upon both sides that this is the only testimony which this court has considered. But I ought to add, no material error has been pointed out.

That being so, the question is: whether the order of the District Court, made on the 9th of July, 1875, confirming the sale to Mr. Hodgkins, and that made on the 12th of July, rescinding the order of confirmation and confirming a sale to other parties, should stand — one or both? When the order was made by the District Court rescinding the sale to Mr. Hodgkins and confirming it to other parties, that action of the District Court was brought for review before this court, and this court remitted the case to the District Court with directions to open that order for the purpose of allowing Mr. Hodgkins or Mr. Crane, for whom it was claimed Mr. Hodgkins made the bid, to be heard, because the confirmation of the sale being made by the District Court to Mr. Hodgkins, he became a party in court, and before any order affecting his rights could be properly made by the District Court he was

entitled to his day in court, to notice, and to be heard. The order of confirmation was set aside without any notice to him whatever, and without giving him an opportunity to be heard, upon the *ex parte* application of the assignee. This court decided that to be error, and remitted the case to the District Court in order that Mr. Hodgkins and Mr. Crane might be heard upon their right to this property. They were accordingly heard, and the court affirmed its order of the 12th of July, rescinding the order of sale made to Mr. Hodgkins.

The material question is: whether that order was right, and should be affirmed by this court.

I think it should not, but that it must be reversed. And I will proceed to state the reasons why I so think.

The whole action of the assignee, Mr. Hancock, was under a misapprehension of the rights of the purchaser — the bidder — at the sale, which seems to have been shared by the District Court. He seems to have proceeded upon this hypothesis: That as soon as the sale was made by the assignee and confirmed, it was the duty of the purchaser at once to pay to the assignee the $40,000 without any demurrer and upon a moment's notice. That was a mistake — a misapprehension of the law.

What was the position of the case as it stood after the bid was received by the assignee and confirmed by the court? This is the order.

"It is by the court ordered that the sale of the property to J. Hodgkins, for the sum of $40,000, mentioned in his bid therefor, and the said report of the said provisional assignee thereupon, be, and the same are, hereby in all respects approved, ratified and confirmed; and the said provisional assignee, upon the receipt by him of the sum of $40,000, is hereby authorized and directed to execute and deliver to the said J. Hodgkins all bills of sale or other transfers to pass to and vest in the said J. Hodgkins, his heirs or assigns, all the

right, title or interest of said Fox & Howard in and to said property, and to deliver to the said Hodgkins the immediate possession thereof."

What was the effect of that order? It was that, upon the payment of the purchase money, certain acts should be done by the assignee. One of them was, the delivery of the property.

Now, it was the right of the purchaser to examine into the condition of the property—to ascertain where it was. He was not bound by this bid until the 9th day of July, when it was confirmed to him. He had the right to ascertain how and to what extent it could be delivered to him; whether or not the order of the court could be or was complied with, before he could be required to pay his money.

It may be said that the payment of the money and the delivery of the property, and the written transfers and bills of sale were simultaneous acts, but undoubtedly it was the right of the purchaser to look into this matter and to ascertain whether or not the order of the court would instantaneously be complied with.

Now, it is not pretended that in any of the conversations which took place between Mr. Hancock, the assignee, and Mr. Hodgkins or Mr. Crane, it was proposed that the order of the court on his part should be fully complied with. True, the assignee said that he was ready to deliver over the property, but some of the property was not only not in the District but it was out of the State, and it might be a very serious question whether or not it was the duty of the assignee to deliver over the property to the purchaser here; but whether that be so or not it was the right of the purchaser to take the opinion of the court upon that subject and not allow the assignee to prescribe dictatorially a rule to him as to when and how he should pay the $40,000.

Undoubtedly, the court might have prescribed in the

order that a certain sum of money, as a deposit, should be paid by the purchaser to satisfy the court that it was a bid in good faith. That was not done. The court required the whole sum of money to be paid down at once, under certain circumstances. Certainly it was the right of the purchaser to have the judgment of the court on any doubtful questions involved in the order of confirmation. The confirmation was made on Friday and the order of rescision was made on Monday. There was just one business day intervening between the day of the confirmation and the date of rescision.

Now, I am obliged to say on this evidence that Mr. Hancock, the assignee, has not acted in good faith, either with the purchaser or with the District Court.

Let us see whether the facts do not bear that out. The assignee says that he did not know that Mr. Crane was interested in this bid until Saturday the 10th of July. It is clear that he is mistaken upon that point. Numerous witnesses contradict him clearly; and there can be no doubt, in examining this testimony in a candid and impartial manner, he was, to say the least, under a misapprehension. He actually did know that Mr. Crane was interested in the bid and that he was the responsible party, on the day that the bid was confirmed, namely, Friday, the 9th day of July. And yet he is very positive to the contrary. The assignee says, on page 271—"I say I had n't heard Crane's name mentioned in this connection—in connection with this bid—up to and before Friday, July 9th. I swear to that as a positive, definite fact." Whether he means that he did n't hear it *until* the 10th, there perhaps might be some question.

"The reason I am so positive is: That they were all strangers, and they might have mentioned the name of Crane and of Smith or of Jones, or of any other man. What I mean to be understood is, that I never heard the name of Crane mentioned in connection with this matter in any way, so as to call my attention to it, at any time up to Saturday, July 10th."

It is first, "up to the evening of July 9th" and then afterwards, "up to Saturday, July 10th."

Then on page 245 he says: "The first I heard that Crane had anything to do with this bid was from Mr. Hogdkins, on Saturday afternoon."

It is clear, upon the other testimony in the case, that Mr. Hancock was in error in this respect.

He says that he was in the habit of making memoranda or keeping a sort of diary of his business, and especially, as I understand him, of his bankruptcy business. He generally put down the very next day, what he had done the preceding day, but the inference is that he did n't do it always; and I think the experience of every person who undertakes to keep a diary is, that unless he keeps it regularly and promptly, or if he allows a few days to pass by without making the entry he is very apt to confound what was done on one day with what was done on another; and it is clear that Mr. Hancock, in this case, did confound what took place on Friday with what occured on Saturday; at any rate, the testimony is conclusive that he was notified on Friday, the day of the confirmation of the sale, that Crane was interested in it, and that he was the responsible party from whom the money was to come.

It is true that Mr. Hancock says that he made several demands on Mr. Hodgkins for this money, Friday and Saturday, and that he did not respond to them; but, as I have said, he made them under a false impression as to his right and that of the purchaser.

And again, whether he did or not, I hold that as soon as he was apprised that Mr. Crane was the responsible party from whom the money was to be received, that he should have done nothing affecting his rights without giving him notice. He says that he did not consider Mr. Crane as being the bidder; that he had nothing to do with Mr. Crane; that the only person that he had anything to do with was Mr. Hodgkins.

That was a mistake—a misapprehension on his part. As soon as he was informed that Mr. Crane was the responsible party, he, the person who was making the sale and who was acting under the direction of the court, should have acted in entire good faith towards him.

Now, did he? There is one fact indisputable, namely: That on Saturday afternoon he was notified that the money was to come from Mr. Crane, and he had an interview with him, and he was told by him that the bid was a *bona fide* bid, and that the money would be paid. He did n't ask Mr. Crane at that time for the whole of the purchase money; he only asked him then that there should be a deposit made—which was the true view to take of it.

And they separated upon the understanding that a deposit would be made Monday morning—as agreed by both. The amount was not named and properly so, because that was a matter for the court to determine—what the amount of the deposit should be—until the purchaser could have an opportunity of looking into the matter.

I am obliged also to differ from the district court in holding that Mr. Crane was not bound by the bid. I think he was. Mr. Hodgkins was, confessedly, an irresponsible party; he had not the means or ability to raise forty thousand dollars. He was directed by Mr. Crane to make the bid, in whose name was not stated, and did it accordingly, but out of that personal sufficiency which we so often see, instead of putting it in in the name of his principal, as he ought to have done, he put it in in his own name; but still the principal who was behind was bound for the bid, for though a contract under the statute of frauds must be in writing, yet the appointment of an agent who makes it may be by parol.

There is not any satisfactory testimony in this case to indicate any bad faith on the part of Mr. Crane throughout this whole business. On the contrary, as soon as he was

notified by the assignee, he told him it was a *bona fide* bid, and that the money should be forthcoming Monday morning, and the whole conduct of Mr. Crane is consistent with this view. The negotiations which took place between him and other parties by which they were to have an interest in the property purchased, proceeded upon the assumption that he was the responsible bidder and that if his bid were accepted—as it had not then been when these negotiations occurred—he was to let the other parties have an interest, and Hodgkins among the rest.

Now, what was the conduct of Mr. Hancock? He was told by Mr. Crane that the money should be forthcoming Monday morning—*the first thing* Monday morning, as Mr. Hancock says, though that is denied by other testimony. But suppose that to be so, when was it to be forthcoming? Did not the circumstances require good faith from Mr. Hancock to Mr. Crane when he was told the money was to be forthcoming the first thing Monday morning? Certainly. How was his action after that? He went directly from Mr. Crane and entered into negotiations with other parties to make a bid for this property without waiting till Monday morning, or even Sunday morning, and said to them: "If you will put in a bid for $40,500 I will recommend its acceptance." Early Monday morning the assignee went to the judge and asked that the order of confirmation made on the ninth be rescinded and that another bid should be accepted. Was that acting in good faith to Mr. Crane? The assignee was supplied with abundant information; not a particle of dissent arising from any quarter, and therefore knew Saturday night that Mr. Crane was an entirely responsible party, that he was good for the bid. After all this had taken place, the assignee negotiated with another party for a different and a higher bid without notice to Mr. Crane, and went into court Monday morning and claimed that he had asked—not Mr. Crane but Mr. Hodgkins—repeatedly for the payment of the purchase money, and that he had declined to pay, and the court upon his *exparte*

statement, without notice to Hodgkins, or anybody else, rescinded the order.

Then I think it is clearly shown that Mr. Hancock did not act in good faith with the court, and, for the reasons and facts that I have stated, which are uncontradicted, and which are admitted by Mr. Hancock—because he admits that he parted from Mr. Crane on Saturday night under the expectation that the deposit would be made on Monday morning. Now it could not be expected a man would have the necessary amount by him. It is to be presumed, and I think we may take notice of the fact, that it was necessary for Mr. Crane to go to some bank on Monday morning and obtain this sum.

Before Mr. Crane had an opportunity of obtaining any considerable sum and tendering it to Mr. Hancock or to the court Monday morning, the application had been made by Mr. Hancock. He made application to the court, it seems, early; the court, at the moment, declined to make the order. Afterwards, on a subsequent application, the court made the order, but still, all without notice to the purchaser.

At ten minutes after eleven o'clock on Monday morning Mr. Crane appeared before the assignee with two certificates of deposit of $10,000 each, which are conceded to have been good for the amount, and tendered them to Mr. Hancock in compliance with the agreement made between them on Saturday night, and Mr. Hancock said, "It is too late; I have sold the property to some one else, and the sale has been confirmed." This, all without any notice, or without any hint so far as appears, to Mr. Crane.

Now, was this acting in good faith? Was this properly discharging the duties of an assignee? Although this was a sale made by the court, it was—to speak more correctly—made by the assignee, under the direction of the court.

The assignee was the party who advertised and received the bids; he was the agent of the court. Of course he could do

nothing without the consent and the ratification of the court, and as the agent of the court, and, therefore, intimately connected with the action of the court. Naturally, the purchaser had some right to rely on the declarations of the assignee, and to expect good faith from him.

Now, it is most clear, I think, that if the court had been notified on the morning of Monday, the twelfth, that Mr. Crane was the responsible bidder, and that he had said Saturday night, that he would bring a deposit upon the bid Monday morning, the court would not have made the order that it did. I still think that when the attention of the court was called to it immediately, as it was, and the court was informed of what had taken place, and of the understanding, it was the duty of the court to arrest all proceedings. The property had not then been delivered over. Whether the money had been paid or not, I do not know, but, at any rate, the money paid by the purchaser was in the control of the court, and I think it was the duty of the court, at that moment, to give Mr. Crane a hearing, in order that equity might be meted out to these parties, and that no unfair dealing should be practiced between them—especially by the assignee, an officer of the Court.

It is for these reasons, that the order which was made by the District Court, on the twelfth of July must, be reversed, because it is apparent that Mr. Crane, who was the responsible party, had not been fairly dealt with in the purchase which he had made, and when he brought his money, as he did, as soon as it could be expected—he came and insisted it was nothing more than a reasonable time, between the confirmation of the bid and Monday morning, to give him an opportunity to ascertain the situation of the property and to see whether it was forthcoming, and whether the order of the court, made on the ninth could be complied with.

I have considered this case independent, so far, of the rights of the purchasers. It is true that Conro and Carkin

made a bid subsequently at the request of the assignee, and they paid their money into court, and the property was delivered over to them.

It is claimed, because that was done, this court has no power over this sale, in other words, that the parties who may be affected by this sale and this act of the District Court, are obliged to go into a Court of Chancery and file their bill. How could they do that without admitting the validity of the sale, or without taking the confirmation to Conro and Carkin, as vesting in them the title to this property? That was the objection made to the filing of a bill in chancery—which it was thought could not be done so long as there was the order of the District Court standing, confirming the sale to Conro and Carkin.

But, it is claimed that because when a judgment or decree is rendered, and a sale takes place under it, and a writ of error or appeal is taken to a higher court, and the judgment or decree reversed and that does not impair the validity of the sale, the same rule applies here.

That principle is well established. Why? Because the question is not there, as to the validity of the sale, but as to the validity or right of the decree or judgment. It is the decree or judgment that may be set aside and not the sale.

In this case, the very words of the order of sale, *ipsissima verba*, are the subject of controversy; whether the sale should stand as the order of the District Court. It is not a sale made under a decree of the District Court, but it is the order of sale itself by the District Court, in an ordinary bankruptcy proceeding, and the question is—whether this sale shall stand? I insist, in all such cases, the purchaser takes the property, if delivered over to him, and he pays the money, subject to the supervisory power of the Circuit Court over the sale.

As I said in a former part of this opinion, it would be a very easy matter to get rid of the supervisory power of the

Circuit Court, to confirm a sale and deliver over the property and receive the money. That, certainly, was not the intention of the act of Congress, as is apparent from the fourth section of the amendment of 1874.

There is one question which I have not considered, and which I shall leave open because it was not discussed, and I desire to give the parties an opportunity to argue it. That question is as to the effect of the confirmatory order of the court made on the ninth of July, whether or not it was competent for the court, before the money was paid, if Hodgkins or Crane was ready to pay, upon the receipt of a higher bid, to set aside the previous order and to direct the assignee to transfer the property to the purchaser; that is, perhaps, not clear. It may be that it was the right of the first purchaser, upon the payment of the money, to hold the property, because it will be observed that this was not a case of the whole proceeding being *in fieri*, when the power of the court over the matter was plenary when bids were being received, but it was after a confirmation was made of the sale. I do not wish to foreclose the parties in relation to that question.

It is claimed that the bid which was made by Conro and Carkin was a higher bid and better for the estate, but if the court was inclined to receive a higher bid, and had a right to do so before the money was actually paid, and could do away with the confirmatory order of July ninth, it was its duty to give that purchaser to whom the sale had been confirmed equal rights with the subsequent purchaser, because that was giving the subsequent purchaser an unfair advantage; it was saying to him after the order confirming the sale — "If you will come in and bid a higher price, the sale shall be made to you, without giving the other party the same opportunity of making a higher bid."

If the court allowed an increased bid, it ought to have permitted it to come as well from the party to whom the sale had been confirmed, as from a stranger.

That also is a question I do not now decide. It was not discussed, and if the parties desire it, I will leave that open; that is, whether this court shall direct the property to be resold, taking the bid of Mr. Crane at $40,000, or whether, upon the payment of the money, the court shall direct the sale to be directly confirmed to him. All that I now do, is to reverse the order of the District Court made on the twelfth of July, with costs.

After further argument by the counsel for the respective parties, on the question as to whether the petitioners' bid should stand approved by the final order of the Circuit Court, and the property be delivered to them, the court subsequently entered the following final decretal order:

FINAL ORDER AND DECREE

OF THE

CIRCUIT COURT.

UNITED STATES CIRCUIT COURT
NORTHERN DISTRICT OF ILLINOIS.

MONDAY, APRIL 24, A. D. 1876.

Present, HON. THOMAS DRUMMOND, Judge.

IN THE MATTER OF
HARRY FOX AND
WILLIAM B. HOWARD,
Bankrupts.

Petition for Review.

The questions involved in the petition of Charles S. Crane and Jefferson Hodgkins, and the answers thereto of Albert Conro, Willard S. Carkin, Harry Fox and Bradford Hancock, the assignee having been heretofore argued by the counsel of the respective parties, and the court being now fully advised; it is adjudged and decreed that the order made by the District Court in this case, on the twelfth day of July, A. D. eighteen hundred and seventy-five, vacating and setting aside the order of that court of July ninth, A. D. eighteen hundred and seventy-five, which last order confirmed the sale of certain personal property of the bankrupts to Jef-

ferson Hodgkins for forty thousand dollars, and which first order directed the assignee to make sale of certain property of the bankrupts to Conro and Carkin be reversed.

And it is further adjudged and decreed that the order of July ninth, A. D. eighteen hundred and seventy-five, of the District Court above referred to, remain in full force and effect as originally made.

And it appearing that the sum of forty thousand dollars has been paid into the District Court on the sale confirmed to the said Hodgkins on the ninth day of July, A. D. eighteen hundred and seventy-five, and this court being of opinion that upon the payment of the purchase money by the said Hodgkins, the order of the ninth day of July aforesaid vested in him from that date all the right, title and interest of the bankrupts in the property, the District Court is hereby directed to order the assignee to execute and deliver to the said Hodgkins the necessary papers to show the title in the said property, and to cause the assignee to deliver the said property to the said Hodgkins, or to the said Crane.

And the District Court is hereby directed and required to make all needful rules and orders, summary or otherwise, to carry into effect the said confirmatory order of July ninth, A. D. eighteen hundred and seventy-five.

And the District Court is directed to return subject to the conditions hereinafter stated to the said Conro and Carkin the sum of forty thousand five hundred dollars, the amount of purchase money paid by them, the sale to them being hereby annulled and set aside.

And it being claimed by the said assignee that the sale proposed to be made to the said Conro and Carkin was a better one for the estate than that to the said Hodgkins, and the petitioners in this court having offered to make good to the estate any difference that might be in the same, and

having tendered the bond of Charles S. Crane with James E. Miller as surety in the penal sum of four thousand dollars, to pay any such difference, which bond is satisfactory to the assignee and is hereby approved by the court, and there being a controversy touching the said difference, the District Court is directed to refer the matter to H. N. Hibbard, Register in Bankruptcy, for consideration and report thereon, as to what amount of money, if any, the said Charles S. Crane shall pay to the said assignee.

And there being a question raised as to the rights of the parties growing out of the possession, for a time, of the property by Conro and Carkin, and of certain moneys paid by them for claims thereon, expenses, improvements and repairs, as well as the profits; it is ordered, that the said Conro and Carkin, or the assignee, or the said Crane and Hodgkins, or either of them, may have the right to file a bill, or to commence other legal proceedings in any court having jurisdiction thereof as they may be advised, to determine the rights or equities of the parties. And the District Court may, on the application for that purpose, retain any part of the money now in the District Court and belonging to Conro and Carkin, or require security before the said money is paid to them from the said Conro and Carkin to answer for any claim due from them growing out of the possession and use of the property to any party or parties entitled thereto. And the said Conro and Carkin and Bradford Hancock, thereupon pray an appeal to the Supreme Court.